Political and Transitional Justice in Germany, Poland and the Soviet Union from the 1930s to the 1950s

Edited by Magnus Brechtken, Władysław Bułhak and Jürgen Zarusky

Wallstein

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WALLSTEIN VERLAG

We dedicate this volume to the memory of
Arseni Borisovich Roginsky (1946-2017),
the co-founder and long-time chairman of the board of Memorial,
and to the memory of Jürgen Zarusky (1958-2019),
who dedicated his academic life to the research on historical
and political justice and inspired this volume.

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Contents

2. Dealing with State Crimes

Magnus Brechtken, Władysław Bułhak and Jürgen Zarusky (†)

Introduction[1]

Political Justice and Transitional Justice seem to be at best contingently related terms. Political Justice is usually associated with atonement for political repression and injustice, while Transitional Justice is a means of overcoming a repressive past. But the two phenomena are not as strictly separable as may seem. In 1961, when the term "Transitional Justice" did not exist yet, the German-American jurist and political theorist Otto Kirchheimer, treated "Trial by Fiat of the Successor Regime" as a form of political justice. This formulation was the title of the eighth chapter of his classic study *Political Justice: The Use of Legal Procedure for Political Ends*.[2] But Kirchheimer was far from denouncing Nuremberg as victors' justice in the way many old Nazi apologists did (and new ones do now). For Kirchheimer, political justice is not a pejorative, but an analytical term. Somewhat paradoxically, if inevitably, it is the spread of the rule of law that leads to the extension of political schemes into the court room. Legal procedures lend authenticity to political action and specific legitimacy to power holders. This holds true for liberal democracies where legal procedures follow the principles of the rule of law and for totalitarian dictatorships where political trials are staged as cruel caricatures of justice which, more often than not, is not so obvious to the vast majority of its subjects. The great Moscow show trials of 1936-1938 offer a

1 The editors would like to thank Anne-Kristin Hübner for her tremendous support in preparing this volume, particularly in organizing the communication with all authors. We also thank her and Antoni Bohdanowicz for the rarely appreciated commitment as proofreaders. The texts were written originally in Polish, German and Russian. We are very grateful to Antoni Bohdanowicz for his work on harmonizing the translations for the English-speaking reader. For any mistakes and deficiencies still in the texts the responsibility is with the editors.

2 Otto Kirchheimer, *Political Justice: The Use of Legal Procedure for Political Ends* (Princeton, 1961).

DOI: https://doi.org/10.15463/ifz-2019-1-1

most striking model of this specific form of political justice. On the bench of the first of these three trials sat military judge Iona Nikitchenko who, less than ten years later, was to become the main Soviet judge at the Nuremberg trials. Although for the most part, American, British, French and Soviet jurists sought to achieve objective and balanced cooperation, Nikitchenko at one point tried to foist the Soviet propaganda version of the mass-murder of Polish officers in Katyn by Germans (rather than by the NKVD) on the International Military Tribunal. In thwarting this looming gross miscarriage of justice, the Western judges managed to prevent Nuremberg from turning into a farcical mockery of justice.

This example, blatant as it may be, should suffice to demonstrate the overlapping of political and transitional justice. There is a plethora of other, more subtle entanglements between these two seemingly separate spheres of justice. The observable cases of confluence of classic political and transitional justice, as well as Kirchheimer's conception, inspired the idea of staging the international conference "Political and Transitional Justice in Germany, Poland and the Soviet Union from the 1930s to the 1950s" that took place in Warsaw in March 2015. The organisers wished to focus on Europe's sea-change decades from the 1930s to the 1950s which rumbled on to the once ominous, once tragic backdrop of dictatorship. The conference languages were Polish, Russian and German, whereas the editors of this volume decided to publish the contributions in English in order to make them available to a wider international readership. This collection of articles is not intended to serve as an encyclopaedic overview but to provide a variety of insights into a somewhat less well-known field of academic inquiry. The papers of historians (and one jurist) – both renowned and younger ones – from Germany, Poland and Russia, as well as Ukraine and Belarus, tackle a considerable range of aspects which should inspire comparative reflection. Through historical research into problems of power and justice, problems that have their specifics in any country and period but which also have their related structural principles, the editors of this volume hope to contribute to overcoming national divisions and establishing common, transnational perceptions of our shared cultural heritage.

The conference had been organized with the trilateral cooperation of the Institute of Contemporary History Munich-Berlin, the Institute of National Remembrance (IPN) with its headquarters in Warsaw and the Memorial Society in Moscow. It should be underscored that the histories of all these three institutions reflect the fact that their countries had been specifically affected by the problems of authoritarianism, totalitarianism, the Second World War and, consequently, the problems of coming to terms with this difficult past. Without ever losing sight of one's own history and responsibility for it, all

three partners strove to organize a scholarly exchange of views that would help to broaden the common intellectual ground.

The Institute for Contemporary History was founded in Munich after the Second World War in particular to establish an independent institution to investigate and research the roots and origins of National Socialism and the way it had come to power in Germany. The Institute's initiators came from spheres closer to politics than academic research. They deliberately aimed to have an institution free of a university's involvement. It had to be intellectually independent while pursuing research of the highest academic probity. The reason for this aim of independence from university professoriates was the scepticism if not mistrust of established university historians who had participated in one way or another in promoting the national narrative of German superiority and nationalism before and after 1933.

Many German historians had advocated and fuelled the governmental attacks against Article 231 of the Versailles Treaty (the war guilt clause) rather than investigate and deconstruct the origins of the First World War in an independent academic manner. Many historians regarded their profession as a vehicle for legitimizing German foreign policy and redeeming great power politics during the Weimar period. After 1933, many of them had supported the national socialist regime in one way or another. Many younger historians became supporters of the so-called "people's community history" ("Volkstumsgeschichte") and drafted plans for a Europe under German hegemony. As in many other professions, Jewish historians were forced out of the professional discipline of history. With this legacy of German academic historiography in mind, the founders of the Institute assumed that, by and large, traditional chairs of history and established university professors would be incapable of unprejudiced analyses of the reasons why democracy failed and why so many public and state institutions in Germany had become supportive or essential parts of the national socialist regime.

Another reason was the widespread assumption that even if there were historians at universities interested in researching the origins of National Socialism, this would collide with the tradition of great reluctance in German historiography to tackle subjects which had still not quite passed into history. It was the common perception of German academic historians that some water had to pass under the bridge before a topic lent itself to serious research. Last but not least, there was some reluctance among historians (and the wider public) to investigate the actions of people, particularly of the so-called "functional elites", who were still alive and started to re-assert themselves in the early 1950s in many walks of West German public life.

Irrespective of any qualms to the contrary, the urge to found a research institute dedicated to analyzing National Socialism in all its aspects persisted.

It took several attempts, the first two of which failed due to the uncertain financial situation before the foundation of the German Federal Republic (popularly known as West Germany). When the Institute was established in 1949, one of the major aims was to address the still sensitive discussion touching many a raw nerve, on denazification, triggered by the Nuremberg War Crimes trials. Since the German government documents had been seized by the allies, the question of source materials had to be resolved. Many German documents were kept and analyzed at collection points in the United States, particularly in Alexandria, Virginia, until the late 1950s. The Institute's archive in Munich started with copies of documents that had been scrutinized in evidence by the International Military Tribunal at Nuremberg. This was a crucial starting point for German-based research. The Institute thus started in the traditional way of examining all the linked questions triggered by the Nuremberg trial(s) and to adapt these questions for historical research. The analysis of these documents (with their well-known NG-, NO- and NI-prefixed reference numbers to develop search engines for research purposes) continued from 1949 to 1963 in cooperation with the Institute for International Law in Göttingen and the Westphalian Economic Archives in Dortmund. In the 1950s and 1960s the Institute produced a wide range of expert opinions and reports, particularly for legal purposes. The Institute's documentation of these reports starts in 1953. A selection of sixty nine reports on specific historical and judicial questions was published in 1958 to give an overview of the Institute's wide range of expertise.[3] One of the reasons given for this publication was that the knowledge thereby disseminated had so far only been known to those who had been present in court.[4]

By 1959, the number of expert reports hit the one thousand mark. Within the following three years, the staff of around twelve people produced more than 2000 further expert opinions – roughly two a day. In 1961 alone, more than 600 reports were produced for courts, public institutions and administrative needs, and private citizens interested in specific questions relating to the past. Arguably, the most significant expert reports were those for the Frankfurt Auschwitz trial in 1963 to 1965,[5] now regarded as milestones of historical scholarship on details of the Nazi regime.

3 *Gutachten des Instituts für Zeitgeschichte* vol. 1, (München, 1958).

4 Paul Kluke, 'Vorwort', in *Gutachten des Instituts für Zeitgeschichte*, vol. 1 (1958), 10.

5 Hans Buchheim, Martin Broszat, Hans-Adolf Jacobson, and Helmut Krausnick, *Anatomie des SS-Staates: Gutachten des Instituts für Zeitgeschichte*, 2 vols., (Olten and Freiburg im Breisgau, 1965). Vol. 1: Hans Buchheim, "Die SS – Das Herrschaftsinstrument: Befehl und Gehorsam", vol. 2: Martin Broszat, 'Nationalsozialistische Konzentrationslager 1933-1945', 7-160, Hans-Adolf Jacobson, 'Kommissarbefehl und Massenexekutionen sowjetischer Kriegsgefangener', 161-279, Helmut Krausnick,

While institutional interest in expert reports has slowed down over the decades since the 1970s, several important contributions where the Institute provided factual expertise in court should be mentioned. The most prominent recent example was the analysis of the ways in which the right wing National Democratic Party was related or even similar to the original National Socialist Party before 1945. Since the decision to ban the *Sozialistische Reichspartei* (SRP) in 1952 had been based by the Federal Constitutional Court on its clear similarity to the historical National Socialist Party, it was of decisive importance to understand whether or not the current National Democratic Party adhered to Nazi ideology in a similar way. A preliminary analysis by the Institute for Contemporary History in 2014, based on material which had been produced by the National Democratic Party in the years before, showed the clear congruence between the historical essence of National Socialism and the present day political declarations of the NPD. An updated version of the report was produced for the court hearing in March 2016.[6] Although the court accepted that the NPD was by programme and ideology clearly unconstitutional, it did not impose a ban on it since it regarded the party as too small to pose a real threat to the German democratic system. Another recent example of the Institute's expertise in this area is a complex study on the German rule of law in its historical perspective, particularly since 1945. Produced in 2017 in cooperation with several stakeholders, including the Federal Constitutional Court and the Federal High Court of Justice, it aims to establish an institutionalized place for the history and public experience of German constitutional democracy and rule of law in Karlsruhe.[7]

Just like in the case of IfZ, the origin of the Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation dates back to the post-war investigation and prosecution of World War II crimes, primarily Nazi atrocities.

While the original human motives and political mechanisms behind the establishment of both institutions were different in many respects, there were some similarities. There was the problem of suspended or limited sovereignty and strong foreign influence, mostly on politics, but on academia and the juridical system as well. This was due to the situation of a defeated and liberated Germany and a quasi-liberated Poland by Stalin. In theory,

'Judenverfolgung', 281-448; 1967 in two volumes as dtv dokumente paperback; 2005 in 8. ed. as dtv 30145 in one volume.

6 'Das Gutachten des Instituts für Zeitgeschichte zum zweiten NPD-Verbotsverfahren vor dem Bundesverfassungsgericht', *Vierteljahrshefte für Zeitgeschichte,* 65/4 (2017), 619-30 (introduction by Magnus Brechtken); 631-61 (summary of report); https://doi.org/10.1515/vfzg-2017-0034 [31 July 2019].

7 https://www.forum-recht-karlsruhe.de/downloads/ [27 March 2018].

Poland belonged to the victorious United Nations coalition; in practice, by fiat of the Big Three's diktat at Yalta, it was assigned to the Soviet sphere of influence which, in many respects, was no different to foreign occupation. This made it impossible for any official Polish institution to deal with Soviet war crimes, of which there were considerably more than just the Katyn massacre. Thus, for almost half a century, Soviet war crimes were a taboo topic in "People's Poland"; the topic could neither be broached in the public domain, nor made the subject of objective scholarly research.

Such were the conditions in which the direct predecessor of today's Institute of National Remembrance, called the Main Commission for the Investigation of German Crimes, was established. This new office of the new regime was neither an academic nor a scholarly research centre, but a specific part of the justice system, created in support of the drive to search out, prosecute and punish German war criminals. Given the then common anti-German sentiment in Poland and Europe, not to mention the widespread desire for retribution, the prosecution of German war criminals was intended to assert both the national and international legitimacy of the government imposed on Poland by Stalin. Even the documentation-gathering activity, which over time was to prove to be the most significant achievement of the Commission, was, to some extent, a side-effect of this fundamental, par excellence, political objective. Consequently, from the very beginning, the Commission's work strictly fitted in with the concept of 'political justice', in its broadest sense, as proposed by Kirchheimer.

After a few dormant years, the Commission was revitalised in the 1960s to become increasingly audible in the public debate on accounting for and commemorating the victims of Nazi crimes. Its activation was directly related to the then "national-communist" trend within the governing Polish United Workers' Party (PZPR). Being a visible tool of "political justice", in the process, it became an "historical foreign policy organ of intervention" in the controversies exercising West German society and its justice system (such as the dispute over the activities of Fritz Bauer, the Prosecutor General of Hessen). This entanglement in a dubious policy of remembrance did not obstruct but even helped the Commission to become a significant research centre in this area of interest, for, in the process, it acquired very rich and methodically compiled documentation, notably the testimonies of perpetrators and survivors, victims and witnesses.

Upon the collapse of the communist system in East-Central Europe, the Commission, by then known as the Institute of National Remembrance, for some time sought, without much success, a place for itself in the newly delineated area of uncensored debate on recent Polish history and its various "blank" and "black spots". The breakthrough came with the idea of combin-

ing the prosecuting powers of the Commission with the newly established archive, modelled on the German Gauck Institution, which was to collect and make available what was left of the Communist security apparatus's documents. One more component was to be added – that of the Public Education Office – which quickly became not only an educational centre, but also one of the most significant contemporary history research institutes in Poland. The IPN's work, often criticized, sometimes justifiably, and from different angles, political, historical and methodological alike, has undeniably generated the necessary critical mass to base the Polish debate on the country's recent history on proven facts.[8]

To sum up, despite their obvious differences, both institutions, the IPN and the IfZ, were not only centres of political justice-related research, but, to some extent, a sort of instruments of political justice when the time for atonement had come. The situation of partners from the Russian organisation Memorial is different. This organisation offers a clearly non-governmental perspective, which simultaneously engenders comparison of both the Soviet and Nazi totalitarian regimes and their respective systems of repression. This, in turn, brings into focus the various forms and shades of "political justice" in Germany, Poland and Russia (or, more broadly, the entire post-Soviet domain), and the ways of coming to terms with them.

Having begun to germinate in 1987, the Memorial Society was formally founded as a historical and civil rights society in January 1989 in Moscow – in the heyday of glasnost and perestroika. Among its prominent representatives were the physicist and former dissident Andrei Sakharov, the poet Evgeny Evtushenko and the historian Alexander Afanasev. But, from the very beginning, Memorial was a nationwide movement with branches in more than a hundred Soviet cities, and not the initiative of some elite group of intellectuals. Today it has branches not only in most regions of Russia, but also in other countries, as in Ukraine or Belarus, and even in such countries as Germany, Belgium and Italy. Memorial, with its headquarters in Moscow, is endowed with a specialized library, archives and an exhibition area.

The erection of a monument to the victims of political persecution was one of Memorial's first goals. In October 1990 a black rock from Solovetsky Islands in the White Sea, the "primordial cell" of the Gulag, was placed in Lubyanka Square, only a few steps away from the dreaded Cheka-OGPU-NKVD-KGB prison. This monument became a focal point for the remembrance of victims of communist persecution. Memorial did not confine itself to the symbolic level of dealing with the past, but soon developed into a lively centre of scholarly research into Soviet totalitarianism. Its members are

8 See also the essay by Władysław Bułhak in this volume.

highly active in this field and in endeavours to transmit factual information and historical awareness to broader sections of society. Memorial historians have covered a fair expanse of primary source research that has enriched our knowledge and, often, fundamentally changed popular perceptions regarding Stalinism after the opening of the Soviet archives in the early 1990s.

One of the leading figures in this pioneering enterprise was Arseni Borisovich Roginsky (1946-2017), the Chairman of the Board of International Memorial, who co-organized and participated in our conference. Sadly he passed away on December 18, 2017. It might have been especially satisfying for Arseni Borisovich to hold this volume in his hand, not only because of the level of the presentations and discussions in Warsaw, but also because having himself been the victim of its denial, political justice was central to his mission in life. Born the son of a politically persecuted engineer in his father's place of banishment, he was to become a dissident historian. He was sentenced to four years of imprisonment for his activities in 1981. He served his sentence in full, and was released in 1985. In 1992 he was rehabilitated. In 1991, together with Nikita Petrov and Nikita Okhotin, he served as an expert in the trial of the Communist Party of the Soviet Union. It was a trial which indubitably bore traits of transitional justice, but never turned into a "Russian Nuremberg" as some hoped it would. While legislation on the rehabilitation of victims of political persecution was passed and made deep inroads into the collective consciousness of post-Soviet society, there was no clear judicial classification of the Soviet state and its repressive measures, and while the victims were rehabilitated, their persecutors went free. This somewhat schizophrenic form of transitional justice was a constant target of Roginsky's criticism. His life's work was dedicated to the memory of the persecuted and the establishment of historical truth about the Soviet politics of persecution. In recognition and respect for his achievements, the editors dedicate this volume to the memory of Arseni Borisovich Roginsky.

The triple perspective explained above induces us to see "political justice" quite widely, by extending it to various politically or ideologically motivated actions of institutions involved in investigating and prosecuting crimes now passing into history. Our aim is not merely to restate the more orthodox understanding of events and developments which made it imperative to engage the willing cooperation of courts and prosecutors for political purposes. Nor is reference necessarily made to the comparable activities of various totalitarian regimes. We offer the articles in this volume in the hope that they will contribute to broadening the terms of reference of what remains a relevant public debate.

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This volume is divided into two sections, the first of which deals with varieties of political justice in the Soviet Union, Germany and Poland from the 1930s to the 1950s, while the second is dedicated to problems in dealing with state crimes. The aim of the conference was to make a *tour d'horizon* of essential exploratory findings in this field of interest. That is what determines the character of this volume.

Yan Rachinsky (Memorial, Moscow) opens the first section with an analysis of one of the most perfidious forms of political justice in Stalinist times, namely the practice of extrajudicial convictions which were then transformed into pseudo-judgements, mostly by the Military College of the Supreme Court of the USSR. When the defendants appeared before this collegiate body, the verdict of guilty, and as a rule the death sentence, had already been determined by Stalin and his Politburo henchmen. This is why the lists of victims were dubbed Stalin's shooting lists. As Rachinsky wrote, the fact of their existence had been disclosed by Khrushchev in his famous speech at the Twentieth Party Congress in 1956, but the lists themselves finally became available for public scrutiny only in the early 2000s. Memorial published them online at http://stalin.memo.ru/. This article contains Rachinsky's thorough analysis of the development and functioning of this practice.

While the deliberations based on the lists in most cases took only some minutes, the Stalinist show trials were great spectacles and, accordingly, required sufficient exposure time and an audience of appropriately immense proportions. Both were guaranteed for the trial of the "Union for the Liberation of Ukraine" ("SVU") which ran from March 9 to April 19, 1930 in the Kharkov Opera House. The article of Yuri Shapoval from the I. F. Kuras Institute of Political and Ethnic Studies of the National Academy of Sciences of Ukraine provides an in-depth analysis of a relatively early show trial, and illustrates how the Stalinist regime used this instrument in its ethnopolitics.

Irina Romanova, from the European Humanities University in Vilnius, Lithuania, not only acquaints the reader with the *mise-en-scene* of another regional show trial, the "Lepel Affair" in the Belarusian SSR in 1937, but describes how this trial triggered several hundred (!) similar court proceedings. The story of bad local chiefs who had violated Stalin's Constitution, abused power, and overburdened and maltreated the peasants was rehashed in different places with different actors over and over again. Romanova's contribution enables the reader to better understand how Stalinist "alternative realities" were forced on Soviet society by means of political justice.

Although Hitler's regime was no less totalitarian and ideologically motivated than Stalin's, the Nazi institutions of justice were less flexible than Soviet ones. Since Hitler's dictatorship was partly based on traditional insti-

tutions and supported by conservative elites, certain features and habits of the "Rechtsstaat" inevitably persevered. But this did not limit the regime's power, since courts could always be bypassed by using the proxies the police had been equipped with from the start, in early 1933. At the same time courts and jurisprudence proved adaptable to the wishes of the "Führer" to a very high degree. In his article, Ingo Müller, former senior government official and professor emeritus of law of the Hamburg University of Applied Sciences, gives a concise analysis of the structures, the logic and development of this system that combined judicial and extrajudicial persecution to great effect. As the author of the book *Furchtbare Juristen* (Dreadful Jurists), the first edition of which appeared in 1987, Müller is one of the trail-blazers in developing a critical view of the justice system in Nazi Germany and its complicity with that regime.[9]

Ingo Loose (Leibniz Institute for Contemporary History Munich-Berlin) draws the reader's attention to an especially radical phenomenon in the framework of the Nazi court system, namely the Special Courts in the Annexed Polish Regions between 1939 and 1945. Special Courts were instituted in the German Reich in 1933 which involved proceedings with drastically curtailed rights of defendants. This device was extended to occupied and annexed Polish territories, and combined with the anti-Polish racist laws that were introduced, these Special Courts were simply instruments of terror. From another angle, the documents of the procedures, as Loose explains, can be seen as revealing sources for the history of the occupation.

The article of Maximilian Becker (Leibniz Institute for Contemporary History Munich-Berlin) further develops the topic. The author analyses the "Obornik Murder Trial," of August 25 and September 4, 1941 in Posen. The Special Court sentenced former Polish police officers and auxiliary policemen who, on September 4, 1939, i. e. in the opening phase of the German-Polish war, had transported some hundred interned Germans from Gniezno to the outskirts of Warsaw, many of whom died along the way. Eighteen defendants were sentenced to death while ten were found not guilty. The author shows how the trial was accompanied by intensive propaganda that surrounded the so-called "September crimes", i. e. the alleged violent actions of Poles against Polish citizens of German descent. The numbers of victims were greatly exaggerated by the Germans, in justification of the German invasion and occupation of Poland. The views that were officially established by propaganda even found their way into German court judgments.

9 Ingo Müller, *Furchtbare Juristen: Die unbewältigte Vergangenheit unserer Justiz* (München, 1987).

Jarosław Rabiński, a historian affiliated with the Catholic University of Lublin, who specialises in the history of the Polish Christian Democratic movement, shows that the issue of "political justice" does not necessarily have to be connected with atrocities committed by foreign totalitarian regimes. He illustrates his argument by reference to the "Brest trials", where the defendants were leading members of the opposition to the ruling "Sanacja" regime, including the former Prime Minister Wincenty Witos of the Polish People's Party. The government-in-exile, which was formed in France under General Władysław Sikorski, after the defeat of Poland in 1939, faced a specific dilemma. It had to choose between the need of wartime "national unity" and having to come to terms with the legacy of the authoritarian Polish government, which had been accused of dismantling the democratic system and contributing to the military defeat against Germany. As Rabiński shows, the latter idea finally prevailed though its form was meeker than originally intended: a special commission was established to investigate the underlying causes of the September defeat, and its goal was to "register facts and collect documents". Another symptom was the purge in the officer corps in exile by General Izydor Modelski. Rabiński stresses that the intended primary aspect of the measures in question was legitimisation. More or less factual sins of the predecessors were highlighted to justify the takeover of power by General Sikorski's group, whose manner verged on a coup d'état.

Through Andrzej Paczkowski's contribution readers may acquaint themselves with the basic facts of "political justice" as well as the most important period of dealing with the past in Poland in the 20th century. Paczkowski, a long-established authority in this field of study who is currently affiliated to the Institute of Political Studies of the Polish Academy of Sciences, focuses on the way Poland dealt with its occupation experience, particularly the German occupation. He also briefly characterises the phenomenon and introduces the notion of "total occupation" (derived from the complementary concept of "total war"). In his systematic scrutiny of that total experience, Paczkowski discusses such issues as the successfully implemented design to remove all Germans from Poland (within its new post-war borders), the solution to the problem of Volksdeutsche, i. e. Polish citizens enrolled on the so-called German People's List and German citizens of Polish descent, the issue of punishing perpetrators of German atrocities and their collaborators (including Poles), and calling to account those who failed to fulfil "their obligations as Poles". Poles and Polish citizens were not to give even the most vestigial displays of tacit support for the German occupiers (e. g. actors who performed in German theatres or propaganda films, or journalists who collaborated with the German-sponsored gutter press). Paczkowski approaches the reckoning with the occupation period as a pretext to eliminate political

opponents from another perspective. He juxtaposes the letter of the retribution regulations with the complicated reality of post-war Poland, which required such law to be applied flexibly. He stresses that coping with the German occupation was a nationwide issue, and a source of legitimisation for Communist power in Poland.

Władysław Bułhak, a senior researcher at the Historical Research Office of the Institute of National Remembrance and co-editor of this volume, describes the origins and perhaps somewhat ambiguous history of the institution he currently works for, in the context of the enforcement of "political justice". So far, historiography has failed to provide a comprehensive overview of the subject. Bułhak begins with the documentation of German war crimes by the Polish government-in-exile in London, and Poland's contribution to the broader efforts of the United Nations in this regard. He then sketches IPN's successive evolutionary stages, initially called the Main Commission for the Investigation of German Crimes in Poland, as an organ of a state governed by Soviet-sponsored communists. He highlights the use of the Main Commission to legitimise the authorities in the early years of communist rule and the subsequent role played by the same Commission under a slightly new name and entirely new leadership in the 1960s, not only in prosecuting Nazi war criminals but also in the Moscow-orchestrated propaganda campaign against the ruling elites of West Germany. The overview also contains a brief description of the little-known period of the Commission's activities in the years 1984-1998, by which time its name was changed to the Institute of National Remembrance. Finally, Bułhak discusses the origins and first years of the IPN as we know it today.

Paulina Gulińska-Jurgiel, a researcher affiliated with the interdisciplinary Aleksander Brückner Centre for Polish Studies, which is a joint project of the Halle and Jena universities, applies methodological and research tools to the broader categories of "political justice" and "transitional justice" as extant in the history of the Main Commission for the Examination of German Crimes in Poland. She poses the question regarding their analytical potential and possible restrictions with regard to Polish matters, in particular the period of the birth of the new political system. Gulińska-Jurgiel analyses the period between the summer of 1944 and late autumn 1945, focussing on the attempt to develop institutional forms for the functioning of the Commission for the Investigation of German-Nazi Crimes in Oświęcim (Oświęcim being the Polish name for Auschwitz). This Commission sought to reconstruct the operations of the Auschwitz-Birkenau death camp in the minutest of detail. In conclusion, she expresses her doubt as to whether the legal and sociological category of "political justice", as understood by Otto Kirchheimer, fits the reality described, that is, the literal rummaging in the

remains of a death camp. In her approach, the notion of "transitional justice" as proposed by Rachel Kerr and Eirin Mobekk is more adequate.

Joanna Lubecka, an historian and political scientist who represents both the Cracow branch of the IPN and the Jesuit University Ignatianum, studies the way the cases of German perpetrators of war crimes were handled by courts. She focuses on three aspects that are seemingly far apart thematically, but which she sees as crucial for various reasons. She starts with the fact that the government which was imposed on the Poles by Moscow, aimed at legitimising its power by pushing the idea of "judicial retribution" against the perpetrators of German wartime atrocities. This was well received by the general public, even if that general public was not sympathetic to the new authorities. Lubecka proceeds to expand the perspective towards a discussion of the legal dilemmas European lawyers had to face when challenged with the task of developing a legal framework for judging atrocities committed on behalf of the Third Reich, which met the criterion of legality but ignored fundamental moral principles. She argues that the post-war trials were affected by "extra-legal arguments", based on "justice" emanating from what was perceived to be natural law, and the political will of the allied governments. This also refers to the situation in Poland, where the issue of inadequacy of legal regulations in face of the crimes that had been committed was also raised. Therefore Lubecka's focal point fits exactly into the orthodox understanding of the notion of "political justice". She concludes studying the perpetrators when they had to face the reality of the Polish prisons of the latter half of the 1940s, which is a miniature study of their everyday life, family and emotional aspects included.

Adam Dziurok, a researcher at the IPN branch in Katowice and a lecturer at the Cardinal Stefan Wyszyński University in Warsaw, presents a local study of the process of dealing with the past, where he analyses the activity and case law of the Special Criminal Court in Katowice of 1945-1946. Due to its political and cultural character, the erstwhile Polish-German borderland, posed a number of difficulties with regard to the process discussed in this article. This is because the case law had to take into account the complicated issue of defendants' sense of national identity, and the legal and historical idiosyncrasies of Upper Silesia. Dziurok determines that most of the cases (60 percent) did not concern major atrocities but passive membership of the SA, and the remainder were simple down-to-earth people, doing what they thought they were told to do (a typical defendant was "a hard-working miner or steelworker with a large family"). Dziurok reaches the general conclusion that Polish courts took account of the specific nature of the area by exploiting various loopholes and avoiding judgments in the spirit of the draconian provisions of the so-called *August decree*. Thus, the Silesian variety of justice

of 1945-1946 was relatively apolitical with nearly a half of the trials ending in acquittal.

Hubert Seliger (University of Augsburg) portrays Alfred Seidl, a defence attorney at the Nuremberg Trials and, in the 1950s and 1960s, one of the most influential figures in West German war crime trials. Seidl joined the NSDAP in 1937, but his political career only took off in post-war Bavaria. He joined the conservative CSU and made it to the post of Bavarian Interior Minister. Referring to Kirchheimer's "Political Justice", Seliger presents Seidl as a typical "political lawyer". Despite the changed political system, his affiliations revealed the significant "endurance of a mindset".

Nikita Petrov (Memorial, Moscow) deals with the problems of judicial and extra-judicial punishment and acts of retribution against German prisoners of war between 1941 and 1945. He describes the development and modus operandi of judicial and extra-judicial institutions during the war. He pays special attention to the only open Soviet trial of Germans during the war which, in many ways, bore the typical hallmarks of a show trial. Confronted with the real crimes of the German aggressors rather than fictitious ones, the Stalinist system of justice proved helpless and unable to define and punish the crimes in question in a legally correct manner.

Łukasz Jasiński, until 2018 a researcher at the Museum of the Second World War in Gdańsk, compares the ways the past was dealt with in Poland and Czechoslovakia, which was referred to as "retribution" in the latter country. The subject matter includes both the legal and institutional solutions, as well as the course of the process in both countries. He draws attention to the question of the extent to which the differences in the form of the German occupation, and the scale of repression and collaboration, resulted in the differences between the way these processes were implemented in Warsaw, in Prague and in Bratislava. Jasiński points out several important aspects: the unfounded notion that the Czechoslovak case lacks the "suppressed" experience of Soviet atrocities; the different dynamics of the Polish and Czechoslovak situations in 1945-1949 (both at the internal and the international level); and the clear differences in the ways the institutions and legal instruments intended to deal with Germans were used to combat anti-Communist opposition, both in the political and military spheres. In general, he reaches the conclusion that despite all the differences in conditions and their points of departure, the courses of Polish and Czechoslovak "retribution" proved very similar.

Marek Kornat, a professor at the Institute of History of the Polish Academy of Sciences and a lecturer at the University of Cardinal Stefan Wyszyński in Warsaw, deals with the political and legal origin of the primary retribution regulation issued by the Polish government in exile – the Decree of the

President of the Republic of Poland in Exile of 30 March 1943 "on criminal responsibility for war crimes" – and the content of this legislative act itself. He indicates that any reference to the ground-breaking concept of genocide, which had already been formulated by Rafał Lemkin, a Polish lawyer, is absent in the decree, which is a departure from the principles of legal positivism (including the key principle of Roman law – *lex retro non agit*). In this approach, the authors of this Decree and the official Polish doctrine concerning the prosecution and punishment of Nazi criminals, including primarily Wacław Komarnicki, the Minister of Justice in the Polish Government in Exile, and their co-workers, assumed that the legislative authority had to adopt the principle of just retribution against perpetrators and treat it as a universal ethical principle derived from natural law. Kornat encloses the complete text of this decree and a note by Stanisław Glaser, a co-author of the concept, with his article, which is important for the proper understanding of this legislative act.

The wide variety of contributions in this volume summarizes and reflects the initial collaboration and ongoing academic and intellectual discourse of researchers from three institutions – the Institute of National Remembrance in Poland, the Leibniz Institute for Contemporary History in Germany, and Memorial in Russia. We have one aim in common: to provide research-based knowledge of the highest academic standards and to inform present-day civil society in a reliable and trustworthy manner about historical events and their context. The editors thus aim to throw light on the historical background of present-day discussions on political justice in support of readers seeking to gain independent views on current events displaying ostensibly similar phenomena.

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Jürgen Zarusky, who inspired the international conference on Political Justice which we organized as a common project in March 2015 and who unswervingly worked on this volume with us, passed away suddenly and unexpectedly to our great sorrow while this book went into print. Jürgen Zarusky has dedicated a considerable share of his academic life as well as of his engagement as a public citizen to the research and commemoration of the victims of authoritarian regimes. He unerringly sought truth and justice through his work and will always be remembered for the inspiring, humane and humorous spirit with which he enriched our work and the collaboration we had the privilege to enjoy.

1. Varieties of Political Justice in the Soviet Union, Germany and Poland 1930s to 1950s

Yan Rachinsky

"The Lists" of Extrajudicial Convictions in the Period 1937-1938

The fact that in the period 1937-1938 a large number of people were convicted on the basis of lists approved by Stalin was first reported some sixty years ago – in the wake of Khrushchev's secret address at the Twentieth Party Congress.[1] But these lists were not made available to researchers until the early 2000s.[2] Strictly speaking, contrary to popular belief, lists of extrajudicial convictions in the Soviet Union are not limited to the period of the "Great Terror" of 1937-38. This phenomenon considerably pre-dates this period and, what is more, convictions lists were also compiled in the years following 1938. Therefore, a few words about their context are necessary.

Leaders of the Communist Party from the very establishment of the Soviet regime tightly controlled the country's penal policies. For the smooth implementation of this particular policy, a variety of non-judicial bodies were established to impose sentences *in absentia* and without any protection possible for the accused. The apparatus of the courts in terms of their operation and staffing were also entirely under Party control. Such control was not limited to the creation of repressive bodies and determining the primary methods of repression. In many cases it was the central organs of the Party authorities that decided the fate of specific individuals. The earliest examples of this kind would include the Politburo discussions of 1922 on the subject of the trial of priests, and likewise in the same year on the issue of legal proceedings against the SRs (members of Socialist Revolutionary Party). Lenin actively participated in predetermining punishments – i. e. ahead of the judi-

1 The text of this paper was not published in the USSR until 1989. (*Izvestiya TsK KPSS*, 3 [1989]).

2 These lists were published in text format for the first time in 2002 on CD-ROM, prepared by "Memorial" and the Archive of the President of the Russian Federation; a second edition was published in 2013 and, along with the text contains photographs of all the pages of the source, as well as biographies of the majority of those appearing on the lists.

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cial proceedings – against the accused, in these first show trials. The practice of considering certain specific cases was to continue beyond this period and remained in existence beyond Stalin's death in 1953.

But Party control was not limited to individual cases. As early as April 17, 1924, the Politburo resolved that *all* matters of a political nature for which the death penalty might be imposed should be considered by the Central Committee of the Party prior to being handed over to the court.[3] On July 11 of the same year, the so-called Politburo Commission on court cases was set up; its task was actually to prejudge the sentences of the court. The make-up of the Commission was finally agreed upon by 1926. The composition of the committee was to change, and over the years its members included Aron Sol'ts, Felix Dzerzhinsky, Dmitrii Kurskii, Valerian Kuibyshev, Nikolai Krylenko, Vyacheslav Menzhinsky, Matvei Shkiryatov, Nikolai Yanson, Ivan Akulov, Andrei Vyshinsky, Mikhail Kalinin, Genrikh Yagoda, Nikolai Yezhov, Lavrentiy Beria, Nikolai Shvernik, Viktor Abakumov, Semyon Budyonny, and others.

The Commission's decisions had to be approved at meetings of the Politburo, but instances of changes being sought for such decisions were extremely rare. From 1934 – in connection with the formation of the NKVD and the announcement of the "forthcoming transfer for review by judicial organs of cases, which previously had been conducted out of court" – the Commission had the task to approve (or – sometimes – not to approve) sentences which had already been delivered.[4] However, such procedures had already taken place in 1929-1930 – in connection with the mass collectivisation and the increasing number of death sentences imposed. Sometimes, by special resolution of the Politburo, the right to issue confirmation of a sentence was granted to a "lower court" – for example, from 03/10/1939 to 01/17/1940 this right was granted to Military Councils of the Fronts in Western Ukraine and Western Belarus – "in relation to citizens of the former Polish state."[5]

It would appear that with the formation in 1934 of the NKVD and the termination of the OGPU (Joint State Political Directorate) College and other non-judicial bodies which enjoyed the right to sentence to death, the number of death sentences for political reasons in 1935-1936 proved unprecedentedly low – "merely" about 1,200 a year. The inability to initiate uncontrolled violence created an unusual degree of discomfort for Soviet security service officers of the Cheka. But the conditions for a new mechanism, almost as efficient and trouble-free as any non-judicial body, were created by the Law

3 AP RF. F. 3. Op. 57. D. 73. L.1.
4 AP RF. F. 3. Op. 57. D. 73. L.116.
5 AP RF. F. 3. Op. 57. D. 73. Ll.132, 133.

of December 1, 1934. This law provided for the accelerated completion of investigations (in no more than ten days), and the consideration of cases on an *ex parte* basis without summoning witnesses, without the right of appeal and pardon, and with the pronouncement of sentences within 24 hours.

For a while, this law was used only occasionally – for example, in the case of Leonid Nikolaev (responsible for the murder of Sergey Kirov) in December 1934, and the so-called Kremlin case, the closed hearing of which took place in the Military College of the Supreme Court of the USSR on July 27, 1935.

The situation began to change in 1936, when for the first time (as far as we can tell) the system of extra-judicially condemned lists was applied. A Politburo resolution of May 20, 1936 stated that: "583 people, Trotskyists, in exile, as well as […] 23 people, to be found in secure areas, were to be sought and, by authority of a decision of the NKVD Special Council, be detained in remote concentration camps for a period of 3 to 5 years."[6] The very indication of the exact number to be detained in these camps gives reason to believe that the list of these persons was submitted as a note to assist in staging the initiative. In fact, this was in effect already an instance of extrajudicial conviction by list – but, unlike those of convictions, which we will discuss later, it was "realised" by dint of a meeting of the Special Council, and the penalties assigned were much less severe. But the third paragraph of the same resolution stated:

> "All Trotskyists arrested by the NKVD and indicted on a charge of involvement in terrorism, *are to be brought to justice at the Supreme Court's Military College where in accordance with the law of 1. XII 1934 where they shall be sentenced to execution by firing squad.*
> The NKVD and the Prosecutor's Office of the Union at the end of the investigation shall be obliged *to present a list of persons subject to trial according to the Act of 1. XII. 34.*" (Emphasis by the author.)

These acts contain forerunners of all the elements of the future lists of extrajudicial convictions – both the application of the law of 1. 12. 1934, and the use of the Military College as the condemning authority and submission to the Politburo lists of persons subject to trial.

Just a few days after Yezhov's appointment as Commissar of Internal Affairs of the USSR on October 4, 1936, the Politburo adopted the following resolution:

6 AP RF. F. 3. Op. 24. D. 224. L. 130. Cited according to: Ljubyanka, Stalin and VChK–GPU–OGPU–NKVD. January 1922 – December 1936. – Moscow: MFD, 2003, 756.

> "To agree with the proposal of Comrades Yezhov and Vyshinsky on the measures for the judicial punishment of active participants in the Trotsky-Zinoviev counter-revolutionary terrorist organisation as laid out in the first list and numbering some 585 individuals."[7]

Of this first list only two fragments have been detected to date. In the first of them are 114 people convicted at the second session of the VKVS (Military College of the Supreme Court of the Soviet Union) held in Leningrad October 10-11, 1936; the second fragment features thirty three names, of whom twenty-nine were sentenced to death on October 7, 1936 in Moscow, while three more were shot at a later date.

An analysis of available data on the sentences of the Military College in October 1936 shows that on October 5, the Military College in Moscow sentenced to death forty people; and on October 11 and 16, a visiting session was held in Gorky and, on October 14, likewise in Baku. The names of those convicted are not known to us; it is highly likely that they appeared on an unpreserved part of this list which cannot now be recreated in full.

The policy of extrajudicial convictions acording to lists became systematic in early 1937. On February 4, 1937, Yezhov sent Stalin a note the contents of which agreed with the Prosecutor of the Union, Vyshinsky, and with the Chairman of the Military College, Ulrikh. A draft decree of the Central Committee of the Communist Party of the Soviet Union "on the schedule of the judicial review of cases against members of treasonous and subversive groups committed to sabotage and espionage and against members of terrorist Trotskyist groups" was attached to the note. Condemnation of all participants in Trotskyist groups was to take place according to the Law of 12.1.1934, and Comrades Yezhov, Vyshinsky and Ulrikh were invited "to consider for prosecution lists of Trotskyists, submitted to the visiting session of the Military College of the Supreme Court of the USSR and *outline the preliminary punishments. They should express their own views as to suitable punishments to submit for approval to the Central Committee of the CPSU (b).*"[8] (Emphasis added – YR)

This proposal was accepted. From February 1937, lists with designated punishments began to arrive regularly at the Kremlin for Stalin's approval. Even before the onset of the mass operations (before August 1, 1937), Stalin and his closest associates in the Politburo had already approved lists bearing the names of 4,500 people (3,700 of whom were to be executed). At the same time no further formal decisions on the lists were taken by the Polit-

7 RGASPI. F.17. Op.171. D.242. L.173-174.

8 TsA FSB. F.3. Op.4. D.1464. L.166-167. Cited after: Vladimir Khaustov and Lennart Samuelson, *Stalin, NKVD i repressii 1936-1938 gg* (Moscow, 2009), 331.

buro until the very end of 1938. The review and approval of the lists with pre-ordained punishment was carried out by several people. Their approval "of such action" with their signature as on the lists themselves, replaced any formal decision.

A total of three hundred and eighty-three lists for 1936-1938 have been preserved. Looking at the frequency of the signatures approving these lists, Molotov leads the way, having endorsed some three hundred and seventy two lists. The handwritten resolution "approved" along with the signature of Stalin are preserved on three hundred and fifty-seven lists. L. M. Kaganovich signed one hundred and eighty-eight lists; Voroshilov, one hundred and eighty-five; Zhdanov, one hundred and seventy-six; Mikoyan, eight; and the subsequently executed S. V. Kosior, five lists. Yezhov's signature appears on eight lists (it would appear that he acted here not as People's Commissar of Internal Affairs, but rather as Secretary of the Central Committee).

A few words on how the lists were compiled, who found themselves on them, what was the procedure for consideration of cases. There are many hypotheses regarding the selection of cases for the Military College. The first lists were in their significant part made up of the names of prominent opposition figures who had long been in prison or in exile, as well as of those who had recently been released. All lists included many of those who in later years were customarily referred to as "nomenklatura": "senior Party, Soviets, Komsomol and trade union officials, as well as people's commissars and their deputies, major leaders of the economy, prominent military personnel." Many of them were arrested on the direct orders of Stalin. However, the lists include a great number of ordinary Soviet citizens.

Seemingly, the main reason for inclusion in a list was some concocted affiliation of the accused to a bogus anti-Soviet organisation (military, nationalist, Trotskyite) or conspiracy. In fact, such organisations were the subject of the February note penned by Yezhov, Vyshinsky and Ulrikh. Lists, which subsequently arrived addressed to members of the Politburo, were prepared by the NKVD in Moscow both on the basis of materials of departments of the central apparatus of the NKVD, and on materials sent to the centre from the regional NKVD directorates.

The central authority in preparing these lists was the commission (in the NKVD, it was often called the "great commission"), formally consisting of the People's Commissar of Internal Affairs, Yezhov, the USSR Prosecutor Vyshinsky and the Chairman of the Military College of the Supreme Court, V. V. Ulrikh. In reality, Frinovsky, Yezhov's deputy, usually stood in for Yezhov at these commission meetings; likewise, as a rule, Vyshinsky would be represented by his deputy, G. K. Roginsky.

Cases for the Military College of the NKVD were prepared more thoroughly than those for non-judicial bodies (which involved the troika: the Commission of the NKVD, the Prosecutor of the USSR, the Special Council). Such thoroughness, of course, related not to the actual content of the charges (absurd as they were even by the prevaiing extrajudicial standards of the day), but more to the formal aspect of the case: the presence in the case files of witness statements and confrontation protocols, documents on the extension of the investigation period, etc.

From the documents available today, it is clear that "the great commission" needed to have at its disposal both details of the cases themselves and brief summaries of important information regarding those arrested and the charges. Such information was drawn up by the body which conducted the investigation before sending the cases to Moscow. However, the procedure was sometimes changed for distant, outlying regions. By special permission it was sufficient merely to send the relevant information to Moscow by telegraph. However, it is doubtful whether in practice this was remotely significant – since even when cases were sent to Moscow, it was quite impossible to imagine that the Commission really looked through the investigation papers of the case. Of course there might have been some exceptions, but these were truly exceptions. It was the "great commission" that determined the content of the lists, which were then forwarded to Stalin for his approval. Finalising the list was the responsibility of a dedicated group of staff of the 8th (accounting-registration) department of the GUGB (*Glavnoe upravlenie gosudarstvennoy bezopasnosti* – Main Directorate of State Security).

What did the lists themselves actually look like? The first page usually bore the title: "List of persons to be tried by the Military College of the Supreme Court"; the names of the regions (sometimes structures) which had submitted the lists were specified above the title; the second page provided information on the number of people included in a list, broken down according to geographical location and category. The first category of condemnation meant execution by firing squad; the second, detention in a camp for ten years; and the third – hardly used – eight years in prison.

The lists themselves contained only the surnames, names and patronymics of the defendants; foreign nationals were the exception in that information on each such person was attached on a separate sheet.

Typically, Stalin first put his signature on the given list, and only then did others sign it. But there were exceptions. In the absence of Stalin's signature, pride of place went to Molotov or Zhdanov. The lists are littered with changes to the punishments of individuals, some names crossed out; others have the notation "wait" next to their names, etc. Approved lists were forwarded from the NKVD to the Military College. The regional NKVD departments

were sent copies of the approved lists, and in the case of distant regions, the results were dispatched by telegraph. The procedure was specified by Frinovsky to the NKVD chiefs in Khabarovsk and Irkutsk on August 7, 1937:

> "After approval of the lists, we send a telegraph to inform you of the names of the accused, indicating the category to which they have been assigned. Upon receipt of the approved lists you are to pass the cases to the Military College, which will consider them, guided by the approved categories."[9]

In contrast to the extrajudicial bodies which pronounced sentences *in absentia*, the Military College passed sentence in the presence of the accused. The accused saw their judges and were able to say something in their defence. In very rare cases, it had an effect, and the case was sent back for further consideration. But at least the statement of the accused could be recorded in the minutes of the session. However, the sessions themselves were a mere formality, and typically lasted five to ten minutes. The sentence was imposed in accordance with the previously approved category – changes were extremely rare and in all cases that we know of, further negotiations with Moscow took place. The Judicial Affairs Committee did not consider details of sentences as they had been pre-approved by the Politburo.

An even more "simplified" procedure was used to convict former NKVD workers. Lists relating to them were, as a rule, submitted for signature to Stalin separately and simply bore the title "List", without specifying that the persons indicated therein were subject to trial at the court of the Military College. In total 540 persons appear on such lists. Following the approval of the lists, these people were simply shot. The requirements as to how the sentence was to be carried out in such cases were written by Ulrikh, usually in his own hand; and though the orders contained references to the verdicts of the Military College, the date of the verdict – in contrast to instances of the pronouncement of actual sentences – was not indicated.

Pronouncements of sentences in regard of already approved lists were often delayed, sometimes by many months. This was because field sessions of the Military College physically could not be held in more than one region at a time, or visit a given region on a sufficiently frequent basis. But there were also occasions when the reverse situation occurred: when the visiting session had already arrived in the region, and in Moscow the list had not yet been approved. In a number of cases sentences of those on a list awaiting Stalin's approval were imposed "in advance". In such instances, sentences were processed and instructions on their execution were signed by the Chairman of Field Sessions of the VKVS (Military College of the Supreme Court), but

9 TsA FSB. F.3. Op.4. D.2241. L.685.

with the obligatory caveat: "The sentences in relation to the afore-listed convicts may be enforced only upon receipt of a special order signed by the Chairman of the VKVS, Ulrikh V.V." In this way, for example, on August 10-13, 1938, persons featuring on the Stalingrad list, which was not approved by Stalin, Molotov, and Zhdanov until September 12, were sentenced. The sentences were executed on September 16 – on the basis of a telegram from Ulrikh dated 15/09/1938. Such examples are not uncommon; indeed, they strongly support the view of the crucial role of the Party leadership in the organisation of state terror.

According to our calculations, the actual number of people in the lists of 1937-1938 amounts to 43,634. However, not all of them were sentenced by the Military College. First and foremost, this is due to the fact that numerous lists were approved in August-September 1938. This was the era of change in the leadership of the NKVD, coinciding with the beginning of a decrease in the scope of repressions. On November 16, 1938, by a decree of the Central Committee and Council of People's Commissars of the USSR (signed by Stalin and Molotov) consideration of cases by the VKVS was suspended. Therefore, many of those whose names appeared in the last lists of 1938 were condemned by other courts (tribunals, courts of general jurisdiction) or by the Special Council of the NKVD, and significantly later. At the same time they were often not sentenced to death as instructed in the lists, but rather to other punishments, and sometimes even released. Several instances of extrajudicial convictions on the basis of lists transpired even after September 1938, but their scope was much smaller, and the procedure of condemnation itself underwent some changes. Now, sentences were passed and executed more formally – by formal resolution of the Politburo Central Committee of the CPSU (b).

On February 16, 1939, the Politburo decided to hand over for consideration by the Military College the cases of 469 people, the majority of whom (413) were shot; on April 8, 1939, it approved a list of 931 people (198 of whom were to be shot); on January 17, 1940, 457 people were condemned (346 to be shot). The following two lists, which were prepared by the NKVD and presented to Stalin in September 1940 (537 people) and April 1941 (513 people), were not approved.

Two lists were approved by Stalin during the war. On September 6, 1941, he signed resolution GKO № 634ss authorising the shooting of prisoners at Orel prison.[10] On January 29, 1942, Beria sent Stalin a list of forty-six "persons arrested and belonging to the NKVD." On this occasion the issue was resolved less formally. No action was taken; a resolution was simply

10 RGASPI. F.17. Op.171. D.378. L.191.

imposed: "Shoot all those named in the note. Stalin." The list included a large number of generals: Commanders of the Air Force Districts, a former People's Commissar of ammunition, I. P. Sergeev, and others.

The last list of which we have details (with the names of 35 people) was approved on April 11, 1950, shortly after the restoration of the death penalty in January 1950 (it had been revoked on 26/05/1947). We have not as yet succeeded in identifying a further three lists (ostensibly dated 7. 22. 1950, 10. 24. 1950, 7. 7. 1951) about whose existence we know for sure.

Yuri Shapoval

The "Union for the Liberation of Ukraine" ("SVU") Trial: Fabrication, Mechanisms, Consequences

Since Gorbachev's "Perestroika", several publications have appeared about the SVU[1] trial[2] and those who were convicted,[3] and the testimonies of

1 SVU – an abbreviation for *Union of the Liberation of Ukraine* (comes from Ukr. *Spilka Vyzvolennia Ukrainy*).

2 See for example: Olexandr Abdullin and Vasyl Basarab, 'Sprostuvannya entsiklopedii', *Robitnicha gazeta* (November 19, 1989); Serhii Bilokin', 'Repetitsiya bezzakonnia: Sudovii protses nad "Spilkoyu vizvolennya Ukraini", yakoi ne bulo ta iogo naslidki', *Ukraine, 37-8 (*1989); Vitold Kirilyuk, 'Protses SVU – stalins'ka fal'shyvka', *Literaturna Ukraina* (December 7, 1989); Volodymyr Savtsov, 'Zlochyn, yakogo ne bulo', *Radians'ka Ukraine* (September 12, 13, 16, 19, 26, 27, 1989); 'Reabilitovana Pravda', *Radians'ka Ukraina* (September 12, 1990); Helij Snegir'ov, *Naboi dlya rozstrilu (Nen'ko moya, nen'ko): Liriko-publitsistichna rozvidka* (Kiev, 1990); Olexandr Sydorenko, '"Pidlishogo chasu ne bulo …" Yak i chomu bulo sfabrykovano spavu tak zvanoi Spilky vyzvollennia Ukrainy', *Vechirnii Kyiv* (May 15, 1991); Serhii Bilokin', 'SVU – Opera GPU?', *Nash Chas*, 12 (1992); Yuri Shapoval, *Ukraina 20-50-kh rokiv: storinky nenapysanoi istorii* (Kiev, 1993), 64-81; Anatolij Bolabol'chenko, *SVU – sud nad perekonannyamy* (Kiev, 1994); Hiroaki Kuromiya, 'Stalinskii "velikii perelom" i protsess nad "Soyuzom osvobozhdeniya Ukrainy"', *Otechestvennaia istoriia*, 1 (1994), 190-7; Volodymyr Prystaiko and Yuri Shapoval, 'Sprava "Spilky vyzvolennia Ukrainy": nevidomi dokumenty i fakty', *Naukovo-dokumental'ne vydannia*, (Kiev, 1995); Yuri Shapoval, 'Nevidomi dokumenty pro YuAPTs u zv'yazku iz spravoyu "Spilky vyzvolennia Ukrainy"', *Lyudyna i svit*, 11-2 (1996), 13-7; Fedir Shepel', '"Zaplyamovani" tr'oma bukvamy: Trahediya "SVU"- tse trahediya ne til'ky inteligentsii', *Den',* 132 (August 2003); Yuri Shapoval, 'Teatral'na istoriya', *Dzerkalo tyzhnya*, 9 (March 12-18, 2005) and others.

3 See: Georgii Kas'yanov, 'Dolya akademika Efremova', *Pid praporom leninizmu*, 19 (1989), 75-8; Anatolij Bolabol'chenko, 'Kryvavyi verlibr', *Vitchyzna*, 11 (1990), 112-9; Yuri Shapoval, 'Akademik Serhij Efremov: khronika zahybeli', *Rada*, 40 (1992); 'Lytsar dukhu', *Kyivs'ka starovyna*, 1 (1992), 38-51; Yuri Khorunzhiy, *Lyudyam myla: Opovidi pro Ljudmylu Staryts'ku-Chernyakhivs'ku* (Kyiv, 1993); Serhij Vodotyka, *Akademik Mykhailo Eliseiovich Slabchenko: Narys zhyttya ta tvorchosti* (Kyiv-Kherson, 1998); Vik-

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their contemporaries have been released.[4] The authors of those publications succeeded in refuting the old official narrative of the SVU trial, according to which nobody suffered in vain and all forty-five representatives of the Ukrainian intelligentsia were convicted on reasonable grounds at the show trial, which took place from March 9 to April 19, 1930 in the Kharkiv Opera House. Western historiography has tended to uphold the belief in the existence of the SVU,[5] and this view still finds defenders among some researchers in Ukraine. This can only emphasize that a "broader view of the case demands some reconsideration of our own interpretations and understanding of events".[6]

This article represents an attempt to reflect upon key questions surrounding the topic and seeks to identify both potential areas of controversy and those which merit further investigation. Firstly, however, it might be best advised to briefly recall the history of the SVU case. Having begun the process of setting the All-Ukrainian Academy of Sciences (further referred to as the Ukrainian Academy) to run along communist lines at the end of the 1920s, the Bolsheviks encountered quite significant passive resistance and opposition. One of the symbols of this resistance was Serhij Efremov, a preeminent scholar (the list of his published works ran to over 3,000 items by the mid-1920s) and the recognized leading authority in Ukrainian literary criticism. As an academic and vice-president of the Ukrainian Academy, he was considered "the conscience of the Ukrainian intelligentsia". He had a somewhat difficult, yet resilient character. He was especially incapable of scheming, as opposed to, for example, the former leader of the Ukrainian Central Rada (National Council), the academic Mykhailo Hrushevs'kii, with whom he remained at loggerheads; the party authorities and the State Political Directorate (GPU) skilfully encouraged and sought to stoke up this conflict).[7] What's more, Efremov did not hide his critical view of the Bolshevik regime.

tor Danylenko, 'Odyn z 45-ty. V. Durdukivs'kii', *Z arkhiviv VUChK-GPU-NKVD-KGB*, 1/2 (1998), 253-62 and others.

4 See, for example: *Opera SVU – muzyka GPU: Spogady svidkiv: Zbirka*, compiled by Khoruzhnii Yu (Kam'yans'k-Shakhtyns'kyi, 1992), 152; Borys Antonenko-Davydovych, 'SVU', *Neopalyma kupyna: Narodoznavstvo, istoriya, arkhivy*, 1 (1994), 31-66; Hryhorij Kostyuk, *Stalinizm v Ukraini: Geneza i naslidky: Doslidzhennya i sposterezhennya suchasnyka* (Kiev, 1995); Serhij Efremov, *Shchodennyky: 1923-1929* (Kiev, 1997) and others.

5 See: Yaroslav Bilyns'kii, 'Spilka Vyzvolennya Ukrainy (SVU)', *Entsiklopediya Ukrainoznavstva: Slovnykova chastytna',* vol. 8, (Paris-New York, 1976), 3005-6; James E. Mace, 'Union of the Liberation of Ukraine', in Danylo H. Struk (ed), *Encyclopedia of Ukraine*, vol. 5, (Toronto-Buffalo-London, 1993), 491-2.

6 See: Serhij Bilokin', 'SVU – Opera GPU', *Nash chas,* 12 (1992).

7 See also: Volodymyr Prystaiko and Yuri Shapoval, *Mikhailo Hrushevs'kii i GPU-NKVD: Trahichne desyatylittya: 1924-1936* (Kiev, 1996).

But it should be added that Efremov was not a supporter of an independent Ukraine, and for a long time advocated the idea of a Russian federal system with a place in it for Ukraine.

From 1923, Efremov kept a personal diary, which was published in Kyiv in 1997. This diary, in which he recorded his life, his reactions to social developments and even his jokes, was disseminated among senior Ukrainian SSR leaders after his arrest in July 1929. He recorded his clashes with the government and its representatives and his particular antipathy towards Mykola Skrypnyk, the People's Commissar of Education for the Ukrainian SSR, who was a key figure in the Communist "siege" of the Ukrainian Academy; towards Stanislav Kosior, the General Secretary of the Central Committee of the Communist Party (Bolsheviks) (CK KP [B]) of Ukraine, and the chairman of the Kiev provincial executive committee; towards Panas Lyubchenko, the Secretary of the CK KP (B). These were the main though not the only names on his "list of dislikes".

It was in Efremov, a former deputy chairman of the Ukrainian National Council, that the government saw the symbol of the old Ukrainian intelligentsia. An aggressive propaganda campaign was launched against him in 1928. The formal reason for this was his publication in the "foreign press": that is, in the Lviv newspaper *Dilo*, his defence of the management policy of the Ukrainian Academy. At the same time, the GPU of the Ukrainian SSR was carefully gathering information about the attitudes and opinions of people in contact with him. However, it was part of a broader *chekist*[8] monitoring operation of the Ukrainian intelligentsia, representatives of which were perhaps not as openly acutely critical of the regime as Efremov, critical as they nonetheless may have been. The rising tide of criticism ebbed somewhat after the XII Congress of the Russian Communist Party in the spring of 1923, in accordance with the decisions to implement the policies of "indigenisation" and "Ukrainisation". The gist of it was that if the Bolsheviks wanted to develop Ukrainian culture further, then Ukrainians would cooperate with them.

However, the *de facto* government and secret service deployed a kind of underhand counter-Ukrainisation policy against this particular set of intellectuals. The Bolshevik authorities, distrustful of them, tried to shove them aside and replace them with more trustworthy, pro-Communist members of the intelligentsia. At a certain point, the sheer volume of "incriminating evidence" began to pile up. After the 1928 Shakhty trial, the result of which saw the old technical intelligentsia "blacklisted", and after Stalin's call to root

8 *Chekist* comes from the abbreviation of *Chrezvychainaja Komissija* 'Extraordinary Comission' (Soviet Secret Service) and refers to the person who works for this body.

out "Shakhtintsys" in all spheres of public life, it was the turn of the old Ukrainian intellectuals. By their very existence they were living reminders of the former Ukrainian "samostijnytska paradigm".[9] They had to be taught a comprehensive lesson in "reconciliation" once and for all, which would render the very thought of resisting the Bolsheviks impossible in any real or even hypothetical sense.

The fabrication of the SVU case came about at the time of the "great turning point" – the attack on the peasantry, or the so-called "kulaks". The obsessive search for "class enemies" was to be permanently fuelled by various kinds of "revelations", whereby the political shortcomings of the authorities and the catastrophic socio-economic situation resulting in the famine of the early 1930s, for example, could all be explained away by "hostile sabotage", "Ukrainian bourgeois nationalism" or whatever else happened to pop into the febrile minds of Kremlin propagandists. The SVU trial was to serve as confirmatory evidence regarding the veracity of these revelations.

It is no coincidence that the newspaper *Bilshovyk Ukrainy* (The Bolshevik of Ukraine) published an editorial which said, "In the SVU trial, the Ukrainian Proletariat's court is not only examining the case of the counter-revolutionary detritus of Petlura's supporters and his policies, but is also retrospectively judging Ukrainian nationalism as a whole: the nationalist parties, their treacherous policies and their unworthy ideas for the bourgeois independence of Ukraine".[10] Thus, according to the organisers of this witch-hunt, it was not specific individuals who stood to be judged, but rather the whole period of national struggle for the liberation of the Ukrainian people. The individual defendants, carefully chosen by the Ukrainian SSR's Political Directory, were seen as symbols of this period, its philosophy and ideological foundations.

It is no wonder that, as one of the defendants, Borys Matushyevskyj, recalled, investigator Solomon Bruk (the designated expert on Ukrainian affairs) repeated during the interrogations: "We need to bring the Ukrainian intelligentsia to its knees. This is our task, and it will be done. Shoot those who do not deliver!"[11] This was said behind closed doors, and there were other such disclosures of purpose made at that trial. For example, as the hitherto unprinted part of the trial transcript discloses (the first part was published in Kharkov in 1931), one of the officially selected defendants, Mykola Pukhtynskyj, stated, "If a naive man were to suggest that they are trying the Ukrainian intelligentsia, it would mean that he in no way understands

9 The political paradigm that aimed to establish a state sovereignity of Ukraine.

10 'Ukrains'ka kontrrevolyutsiya pered proletars'kim sudom', *Bil'shovik Ukrainy*, 5-6 (1930), 9.

11 Snegir'ov, *Naboi*, 110.

the current trial. The Ukrainian intelligentsia cannot be brought to justice because it is intertwined with the working class, and the working class itself, unlike those who have broken away from the current Ukrainian intelligentsia, shall not be tried".[12]

Some forty-five individuals appeared as defendants before the court, among whom were two academics of the Ukrainian Academy, fifteen professors, two students, one high school director, ten teachers, one theologian, one priest of the Ukrainian Autocephalous Orthodox Church (hereafter UAPC or Ukrainian Orthodox Church), three authors, five editors, two co-operative workers, two lawyers and one librarian. Fifteen of the defendants worked at the Ukrainian Academy. Thirty one of these people were, at some point or other, involved with various Ukrainian political parties: one had been prime minister, two were ministers of the government of the Ukrainian People's Republic (UNR),[13] and six had been members of the National Council. Two of the defendants, the historian Josyp Germayze and the lawyer Zynovij Morgulis, were Jews, and three of them – Lyudmyla Starytska-Chernyakhivska, Lyubov Bidnova, Nina Tokarevska – were women. The defendants were collectively found guilty as charged. The court found that the SVU existed from June 1926 to July 1929, its stated purposes being "to overthrow Soviet rule in Ukraine by means of an armed uprising with the help of foreign bourgeois governments and to restore capitalist order in the form of a 'Ukrainian People's Republic' (UNR)".[14]

It was also stated that the SVU acted in collaboration with the Petlurist centre in exile, and had declared itself the government of the UNR. Cast as a constituent part of the SVU, the Ukrainian Youth Association (SUM)[15] was alleged to have planned a terrorist campaign against the All-Union and Ukrainian Soviet party-governmental leaders. The Ukrainian Academy and the Ukrainian Orthodox Church were declared to have been clandestine SVU cells.

Only five witnesses were summoned to attend the court hearing and the guilt of the defendants remained unproven; sentences were passed all the same. The maximum sentence was ten years' imprisonment; no death sentence was passed, though most of those convicted died later, primarily

12 *Haluzevyj derzhavnyj archive Sluzhby bezpeky Ukrainy (HDA SBU)* (Branch State Archive of The Security Service of Ukraine [HDA SBU]), Kyiv. – Case 67093 FP, vol. 186, 102.

13 UNR – an abbreviation from *Ukrainska Narodna Respublika* (Ukrainian People's Republic).

14 *Spilka vyzvolennya Ukraini: Stenografichnyi zvit sudovoho protsesu* (Union of the Liberation of Ukraine), Verbatim record of the trial, vol. 1, (Kharkiv, 1931), 14.

15 SUM – an abbreviation of *Spilka Ukrainskoi Molodi* (Ukrainian Youth Association).

during the "Great Terror". There were forty five primary figures in the dock at the SVU trial. A further seven hundred (not four hundred, as was formerly believed) were arrested shortly afterwards in direct connection with the case.[16] According to some estimates, more than 30,000 people in total were arrested, executed or deported during or after the SVU trial.[17]

Panas Lyubchenko, one of the public prosecutors at the trial, wrote in his preface to the SVU trial's published transcripts: "The transcript of the SVU trial ought to be in the hands of the working class as a powerful weapon for exposing the deceitful conspiratorial work, which was and still is being carried out by Ukrainian nationalists against the Soviet nation. The transcript of the SVU trial will tell everyone, in the very words of the defendants themselves – yesterday's leading figures in Petlurism and the Ukrainian People's Republic – for what and for whom the Ukrainian bourgeoisie and Ukrainian nationalists are working; what sort of 'independent' Ukraine they are fighting for."[18]

The State Political Directorate of the Ukrainian Soviet Socialist Republic (GPU USSR) began prospecting the "for what and for whom" message long before the SVU trial. This is confirmed by memoranda that were sent to the Central Committee of the Communist Party (Bolsheviks) of Ukraine (KP[B]U) by Vsevolod Balitsky, the head of the GPU of the Ukrainian SSR, on the 7th and 11th of June, 1929. These were the first documents to feature the future SVU trial defendants. One cannot help but draw attention to Balitsky's haste: evidence against the young people allegedly belonging to the SUM, who were arrested in May 1929, had yet to be received, but it was already considered to be "firmly established that […] Efremov formed and inspired the political mood of this anti-Soviet organisation […]".[19]

The investigators still hadn't managed to squeeze any admission of the SVU's let alone the SUM's existence[20] out of Borys Matushevskyj, a student, by June 10, 1929, and, according to a memorandum of June 11, that day Mykola Pavlushkov (Efremov's nephew) tried to defend Serhij Efremov and Volodymyr Durdukivskyj,[21] which was also the day on which Durdukivskyj was said to have been arrested. But the existence of the SVU was strongly as-

16 *Dokladnaya zapiska o rezul'tatakh roboty po vskrytiju ukrainskogo kontrrevolyutsionnogo podpol'ya v svyazi s delom "SVU"* HDA SBU, Kyiv. – Case 67093 FP, vol. 238, 1.
17 Prystaiko and Shapoval, *Sprava "Spilky vyzvolennya Ukrainy": nevidomi*, 44.
18 *Spilka vizvolennya Ukraini: Stenografichnii zvit sudovogo protsesu*, 1.
19 *Tsentral'nyi derzhavnyi arkhiv ob'ednan' Ukrainy (TsDAGOU)* Central State Archive of Public Organisations of Ukraine (TsDAGOU). – F. 1. – Op. 20. – Case 2994, 29.
20 HDA SBU, Kyiv. – Case 67098 FP, vol. 80, 77-9.
21 Ibid., vol. 70 – Arch. 59-62.

serted in that memorandum. All this adds to the evidence that the course of the trial had been script-written by Ukrainian SSR GPU officers in advance.

One of the key roles in the fabrication of the SVU case was played by the investigator, Solomon Bruk. From 1929 to 1931, he was the "Senior Attorney" of the GPU's Kiev district operational sector with special responsibilities for combating Ukrainian counter-revolution.[22] Bruk received a glowing citation in an honours list for his active role in prosecuting and eliminating the Kiev-based "Union for the Liberation of Ukraine" branch, "an all-Ukrainian insurgent organisation that sought to incite an armed uprising to overthrow the Soviet authorities with the military support of foreign powers, and by organising terrorist attacks against party leaders and representatives of the Soviet authorities".

Bruk received recognition for his outstanding role in eliminating the SVU: this may have been quite easy given that there was nothing to eliminate in the first place, but only he knew that. Thus, he was commended for his perseverance and determination, and his skilled use of "sophisticated agent-operative combinations", which led him to succeed in exposing the central figures in the SVU plot: the academic, Efremov; the SVU centre member, Durdukivskyj; and the head of the youth terrorist combat unit, Pavlushkov, along with several other notable members of the organisation, which put an end to the insurrectionary core of the organisation."[23] For his "outstanding role", Bruk was awarded the Order of the Red Banner in 1929, and in 1938 (in period of the "great terror") he was shot by NKVD.

More than 250 SVU case files were studied from 1988 to 1989 by the then Ukrainian SSR's KGB. The key findings were that although the existence of the SVU's programme and charter were put on record in the indictment and the verdict, about which members of the organisation were allegedly informed (albeit orally), fourteen defendants showed they knew nothing of any of this during the preliminary investigation, and twenty-one defendants weren't even cross-examined on these issues. Specific organisational links between the SVU and émigré forces from without, as referred to in the indictment and the verdict, did not figure in the case materials.

As can be seen from the testimonies, a number of people (who were convicted but managed to survive) were subjected to psychological and physical pressure during the preliminary investigation. In this regard, it is worth quoting a section of the statement written in March 1957 by Vsyevolod Gantsov, addressed to the Chairman of the Presidium of the Supreme Soviet of the Soviet Union, Kliment Voroshilov: "In total, I spent more than twen-

22 HDA SBU, Kyiv. – Case 2472, vol. 2, 2.
23 Ibid., vol. 1, 24-5.

ty- two years in prison and banished to the far North. I was given this severe punishment for my 'crimes' and for belonging to the SVU organisation […] As I have already mentioned, I did not belong to the SVU and did not know about the existence of such an organisation, but in my testimony during the investigation, I assumed that the SVU existed and that I was the only one who did not know about it. It was only after the trial, from conversations with friends and my co-defendants, that I learned that the SVU had never in any way existed, that it was fictitious. Everyone convicted in the trial, including those who were credited as leaders such as Efremov and Nikovskyj, said without exception that the SVU did not exist, and they only confirmed the aspersions cast upon them because they were forced into doing so by the false testimonies of other prisoners; they gave their testimonies under pressure from the investigating authorities."[24]

In fact, during the so-called investigations into those arrested, some pressure was exerted on the students Boris Matushevskyj and Mykola Pavlushkov. They were the first to testify to the existence of the SVU and SUM. The testimonies of others were then employed to denounce others. The available source materials make it possible to assert that the so-called organized structures of the SVU did not actually exist: there was no SUM, nor were there any "medical", "academic", "educational", "pedagogical", "institute asset editorial", "publishing", "autocephalous", "cooperative" divisions, or, for that matter, any Poltavskyi, Dnipropetrovskyi, Chernihivskyi, Vinnytskyi, Odessian, or Mykolaevskyi branches.

In response to protests regarding the SVU case, by decree of the Supreme Court of the Ukrainian SSR of August 11, 1989, the case was closed with full exoneration of those convicted due to the absence of any *corpus delicti*.[25]

Thus, the question of the Stalinist show trials arises, which any researcher of the events of the 1920s and 1930s could hardly ignore: was there any actual (as opposed to mythical) resistance to the Bolshevik authorities, and is it therefore impossible to speak about any SVU or SUM?

Among those forced into roles as actors in this lethal political farce staged in the Kharkov Opera House (the SVU trial was played out on its very stage, which contemporaries sarcastically referred to as "the theatre in the theatre"), were several well-known personalities – real patriots, people with convictions who did not wish to bow to the new political regime. But why did they – the majority of them being older, authoritative (and intelligent) figures – agree to play such roles? It is obvious that many of them did not accept, or acknowledge, communist rule. This still doesn't constitute a solid basis for

24 Prystaiko and Shapoval, *Sprava "Spilki vizvolennya Ukraini": nevidomi*, 348-9.
25 See: 'Protest', *Literaturna Ukraina*, (August 31, 1989).

confirming or unravelling the absurd schemes they were said to have devised by the organisers of the trial.

For a start, it is worth noting that there is no doubt that there was resistance to the Bolshevik regime. The documents confirm this, although the topic in question – resistance to Stalinism – still requires skilled analysis, not quasi-patriotic lament. Here, for instance, the priest Volodymyr Khutoryanskyj of the Ukrainian Orthodox Church gave testimony. He was arrested as a member of the SVU on January 1, 1934. Sentenced to five years in prison, he served time in Solovki, and, on November 3, 1937, was shot dead, like many other Ukrainian prisoners. An informant's report of a conversation has survived, in which Khutoryanskyj said that "despite the arrests of Ukrainians […] there are many people in Ukraine who are still working. There are many more of our Ukrainian brothers who will carry out their work whenever the opportunity arises. We consolidated our forces with the help of the Ukrainian Autocephalous Church, and I myself worked in the former county of Bratslav, and then I was transferred to the Polish border […]".[26]

On the other hand, the hypothesis on the actual existence of the SVU and SUM hardly stands up to scrutiny in light of the documents and facts. There is no reason to say that opposing or harmful structures had been created in the way the employees of the GPU of the Ukrainian SSR would have liked to have seen in 1929 and 1930. This is also confirmed by many secret official GPU documents which were previously unavailable, and which allow for a much deeper understanding of the SVU affair.

It all started with the arrest of a group of young people in Kiev, between May 18 and June 18, 1929, who were accused of belonging to an illegal organisation. Among these young people were also those who had been working with the GPU since 1928, trying to make contact with nationalistically minded people and to pass on important information to security officers.[27] The "evidence" extracted from these people was then used to break the students Pavlushkov and Matushyevskyj, and to get them to testify in accordance with the party line (primarily against the academic Efremov as the supposed leader of the SVU). Then came the arrests.

26 *Regional'noe upravlenie Federal'noi Sluzhby Bezopasnosti Rossiiskoi Federatsii po Arkhangel'skoi oblasti* (Regional Office of the Federal Security Service [FSB] of the Archangelsky District). – Case P-14799 P. 6.

27 It might be added that, during the Second World War, some of these individuals were abroad and already found themselves as part of the forces opposed to the communist regime. This immediately politicised the problem of examining SVU and SUM cases: it was said to be unpatriotic to slander Ukrainians who did not obey the Bolshevik regime, but fought against it.

It should be acknowledged that the investigators skilfully wielded bespoke methods of blackmail, which did not necessarily involve physical pressure. To take the case of Sergij Efremov as an example, in the course of his interrogation on June 25, 1929, shortly after his arrest, he said that he "did not know about the existence of a counter-revolutionary organisation and had not heard of it from anyone."[28] But, by September 10 he was confessing to "the existence of a 'Union for the Liberation of Ukraine', a counter-revolutionary organisation, which he belonged to".[29] So what actually happened in the space of those three months?

Borys Matushyevskyj asked Efremov about this some years after the SVU trial, when they met by chance during a walk in the Yaroslavl prison exercise yard. The answer was as follows: "I was told at the interrogation: you, and people like you, should leave today's Ukrainian cultural scene and social life, because you attract hidden potential enemies of the Soviet system. Ukrainian culture and science will continue to develop, but without you. New Soviet specialists of the Ukrainian intelligentsia who are not prejudiced in their work, have grown up and will replace you. So, you must choose: either you give us the SVU in line with our offer, and in that case you and others will undergo a public trial, where there will be no executions and the sentences will be quite soft, or, you will not have a trial and it will all take place under OGPU (United State Political Department) diktat, and the whole of Ukraine will be tainted with the blood of the so-called 'willing Ukrainians'. We can do this – I'm sure you of all people understand."[30]

This is how Efremov described their behaviour. There was also a personal motive. In 1992, Tatiana Ilchenko from Kiev wrote a letter to the newspaper "Rada" that she had had contact with Efremov in her childhood. He lived with Volodymyr Durdukivskyj, whose sister, Onysia, was in fact Efremov's wife. Ilchenko had visited Onysia Durdukivskaia with her mother during the Nazi occupation who said that Efremov was threatened that if he did not sign the falsified papers necessary to the investigation, then she would be arrested. Knowing that torture would kill her, he signed everything.[31]

One more valuable witness account of Sergiy Efremov has survived. The GPU had planted an informant in the cell in which he was being held, who gave detailed reports about his cellmate's moods, what he said, and how he behaved. Thanks to these unique reports dated November 1929 (which I managed to track down in the archive of the Security Service of Ukraine), it

28 HDA SBU, Kyiv. – Case 67093 FP, vol. 11, 37.
29 Ibid., 96.
30 Cited after: Antonenko-Davydovych, 'SVU', 51.
31 *Rada*, (March 27, 1992).

is possible to understand the "mechanics" of the fabrication of the SVU case. Here are some examples:

> "16.11. Efremov continued to write the 'forced confession', as he himself put it, about that which didn't exist. He was nervous, forever repeating – 'abominable existence'. To my question about whether he had a lot more left to write, he answered 'a little', and that he would not and could not write at length like the others because there was nothing to write […]."

> "18.11. Efremov returned very agitated from the interrogation and replied to my question of 'Well, how was it?': 'I have never once been in such an abominable, pitiable and foolish state. It would have been much better to have taken me away and finished me off, than to torment me every day with these interrogations […] I would even be glad if there really were an organisation with all these people and the specifics which are now being tied to it. Then I would come clean about everything and that would be the end of it. Then I would confess all of the details, because I myself would know them, but to tell now of details I don't know […] And besides that, the results are being made extremely one-sided and (they) have no interest in ascertaining and identifying actual truths, but rather only in confirming the existence of this organisation […] An investigator told me that he expected more from me. He wants me to write 500 pages like the others, more if possible, because I am considered the ringleader. But what is there to write? If they would let me read the witness statements of those who had created this mythical organisation, I would simply confirm it […]'"

> "It should be noted that during this conversation, Efremov was very agitated and dead on his feet, and he was choking up as he spoke with tears in his eyes."

> "19.11. Efremov started to write a response to the investigator's questions recorded yesterday and again started to become agitated and angry […] 'Write, but write what? The investigator says that I am only writing what they already know and I am trying to conceal what is, in my opinion, unknown to them […] He seems to be a nice person and sympathises with me and my fate, but in no way understands me […] I tell him that when I've already confessed to some 'facts', then I cannot tell any official person that it is simply not the case; I only speak totally openly to him alone, telling him that I'm confessing to something which doesn't exist.

He, however, doesn't believe me, saying that we both know that it exists. Although 'they' have clearly told me what I should write …'."[32]

In the end, that's what happened: the academic was "encouraged" to write over 120 pages of information about his crimes, and did so with his own hand. It was a real human tragedy that was not only experienced by Sergij Efremov but also by the other SVU trial defendants.

The size of this document does not give detailed evidence about who were at Kharkov Opera House during the SVU trial. The general assessment of those who were able to comprehend what they saw is that it was a theatre of the absurd, and that the calmness with which the defendants admitted to their dark, treacherous intentions made one wonder if they were quite in their right minds. Mind you, there were also some "technical" problems. Whenever any defendant began to stray from the script and say something unexpected, the session would be adjourned, and the next session would resume when the defendant was sure to know his lines.

Mykola Pavlushkov, who was declared the leader of the SUM, tried particularly hard. The writer Boris Antonenko-Davidovich, who witnessed the SVU trial first-hand, wrote that Pavlushkov, "looked in court as the leader of an operetta, deprived of his troupe".[33] But his sister, who was abroad, and some others, sought to make a hero of him, as one who supposedly used the platform of the trial to stir up Ukrainian youth against the authorities.

One of the defendants who managed to survive (he emigrated to the United States, where he died in 1979), Kost' Turkalo, wrote: "There are still Ukrainians who consider the 'Union for the Liberation of Ukraine' affair of the 1920s as discrepant: that is, they don't know and it is not clear whether or not this organisation actually existed. But there are those Ukrainians […] who claim that there was an SVU in the 1920s, and thus justify the Moscow Bolshevik regime that executed the completely innocent elite of the Ukrainian scientific intelligentsia. As one of the defendants, I personally reject the inconsistency in this matter and with full moral responsibility resolutely state that there was no formal SVU organisation. It was the Moscow GPU's deliberate ruse – with the help of two of the defendants in the case – to create a legal basis for the destruction of the top Ukrainian scientific intelligentsia of the time. When I spoke to all those defendants at court, those who were treated as my friends and acquaintances, they told me that they

32 Cited from: Yuri Shapoval, *Ukraina XX-ho stolittya: osoby ta podoii v konteksti vazhkoi istorii* (Kiev, 2001), 430-1.

33 Cited from: Antonenko-Davydovych, 'SVU', 47.

learned about the 'existence' of the SVU from the examining official during the pre-trial inquiry."[34]

Efremov and Pavlushkov were the "two defendants". The latter pointed out exactly where Efremov had hidden his diary, which served as virtually the only evidence of his "counter-revolutionism" (there wasn't even a hint to suggest the existence of some kind of underground network in the text, although given the "intimate nature" of the diary genre, there could have been). Incidentally, after the verdict was passed, Efremov said to Vsevolod Gantsov, "I will never forgive Mykola. Mykola is dead to me. I trusted him even more than Durdukivskyj. He is the only one who knew the hiding place of my diaries."[35]

Oleksander Semenenko, one of the contemporaries who was also obliged to attend the same trial in the Kharkov Opera House, left some interesting memoirs that once again highlight the orchestrated nature of the SVU case:

> "The defendants were brought from the prison not in a 'Black Maria' but in ordinary buses, as though on an outing. During recesses, they took tea and biscuits to the defendants on the stage. The organisers blatantly overplayed their roles as humanitarian students of Dzerzhinskii. The remarkably large sweets in particular were somewhat out of place there, though, to be sure, confectionary did represent the good life at the time. However, I suppose that Sergey Efremov, a man of great dignity, could not discard them or push them away, and nor could the others, just as they could not withdraw their previous testimonies, given in Kiev, exhausted as they were by the long days and nights without sleep. The confessions and the theatrical sweets – everything was included in the pre-designed ritual, and the defendants had to comply."[36]

An important step towards the clarification of the historical truth about the SVU was made in 1970 by filmmaker, writer and human rights activist Gelii Snegirev, who wrote the book *Ammunition for Execution*, which was published abroad and then for the first time in Ukraine in 1990. Using only the materials available to him at the time – press reports of the 1930s and the memoirs of some of the defendants in the SVU case – he convincingly demonstrated its fabricated nature. Such memories and publications as exist tend to suggest that the chief of the secret department of the GPU of the Ukrainian SSR, Valerii Gorozhanin, and the chief of the second branch of the secret department, Boris Kozelskii, were always present on the stage of

34 Kost'Turkalo, *Spohady* (New York, 1978), 4.
35 Cited from: Snegir'ov, *Naboi*, 108.
36 Olexandr Semenenko, *Kharkiv-Kharkiv …* (Kharkiv-New York, 1992), 97.

the Kharkov Opera House and directly supervised the course of the trial. It is precisely these two men who are believed to have been the real orchestrators of the SVU affair; their signatures are on the bill of indictment,[37] as well as on the documents with which the SVU case was opened.

Ultimately, this was the extensive "Report on the results of the work to expose the underground counter-revolutionary resistance throughout Ukraine relating to the SVU case", the "Memorandum on the case of the Odessa branch of the Union for the Liberation of Ukraine", the "Report on the activity of the medical division of the SVU", the "Provisional list of those arrested in Kiev who are on trial", and some other documents. The contents of these documents are astounding in that not one actual crime was registered as having been committed by those who were persecuted for their affiliation with the SVU. This seems paradoxical, but such is the case. Specific "criminal" intentions and conversations about certain mutinous schemes are discussed, but not one actual action is cited.

Another salient feature of the documents put together by the Ukrainian GPU at the end of 1929 is their absolute Ukrainophobia. Once one has become acquainted with their contents, it is impossible not to come to the conclusion that the fabrication of the SVU case and the preparation of the open trial for this case constituted key steps in the concerted drive to discredit the politics of "Ukrainianisation". Practically everything Ukrainian in these documents is described as "Petlurian", "nationalist", "harmful" and so on.

The "Report on the results of the work to expose the underground Ukrainian counter-revolutionary resistance throughout Ukraine relating to the case of the SVU" typifies the method. This is a fairly exhaustive document summing up the work of the GPU in Ukraine's district centres and provides convincing evidence that the SVU case organisers focused their primary assault against the Ukrainian intelligentsia, and not just at the older members of Ukrainian society. Virtually all associations and unions dedicated to the study of the Ukrainian language in Vinnytska Oblast, for example, were branded as "nationalist".[38]

"Counter-revolutionary chauvinist factions" of Ukrainian language teachers, who created "associations of Ukrainisers", were exposed even in Luhansk. As it was said, "the group aimed to surround itself with Ukrainian chauvinists and influence teachers and students".[39] The famous historian and academic, Mykhailo Slabchenko, was accused of forming a group of "future

37 *Spilka vyzvolennya Ukraini: Stenografichnyi zvit sudovogo protsesu,* vol. 1, 156-60.

38 HDA SBU, Kyiv. – Case 67093 FP, vol. 238. *Dokladnaya zapiska o rezul'tatakh roboty po vskrytiju ukrainskogo kontrrevolyutsionnogo podpol'ya v svyazi s delom "SVU"*, 57.

39 Ibid., 60.

young professors" around himself, who were, as always, accused of "chauvinist work".[40]

The question arises: who determined the degree of "chauvinism" or "nationalism", and by what criteria? Were they the undereducated investigators of the GPU, who were in fact strangers to the Ukrainian environment and culture? Everything "indigenous", i.e. Ukrainian, was automatically taken to be "nationalistic". At the same time they were quite sure that they weren't mistaken in doing their paymasters' bidding; they did what they believed the authorities expected of them. So, in developing the SVU case, the GPU laid the foundation for the subsequent holocaust that was visited on Soviet Ukraine in 1932 and 1933.

Another feature of these documents was the desire to discredit the UAPC and pave the way to its destruction. It is not by chance that what was to incriminate members of the Ukrainian Orthodox Church (UAPC) was planned in detail in one of these documents from December 1929, one of its primary features being the allegation of "atheism of most Autocephalists". The question arises here again: by whom and by what criteria should the extent of atheism be determined? Next, it's the "Petlurist past of most Autocephalists", the use of UAPC SVU members as "tools to exert clandestine anti-Soviet influence on the masses", the "Ukrainisation of the church and religion as a means of fulfilling the purpose of the SVU".[41] Members of the GPU went to great lengths to "decipher" these details.

Osip Zinkevich, in his study "The Case of the Ukrainian Autocephalous Orthodox Church in the trial of the Union for the Liberation of Ukraine and its elimination in 1930", suggests that the investigators of the GPU, having realised in advance that they would be unable to secure the compliance of UAPC members in the course of the investigation, decided to resort to the device of convening an "emergency council" of the UAPC on January 28 and 29, 1930.[42] This "council", which was held on the eve of the SVU trial, adopted a resolution on the UAPC's connections with the SVU, on the "counter-revolutionary spirit" of the UAPC and, of course, on its self-liquidation. The "council" itself was simply the Ukrainian SSR GPU's stratagem designed to attest to the "collapse" of the UAPC.

These documents contain not only the names of those who found themselves in the dock, but also of the ad-hoc defendants who were softened up in preparation for the trial. The handwritten corrections made to these documents are particularly noteworthy. So, in the "indicative list" (that is to

40 Ibid., 4.

41 Ibid. *Dokladnaya zapiska GPU USRR V.A. Balitskomu*, 8.

42 Osyp Zinkevich, 'Sprava Ukrainskoi Avtokefal'noi Pravoslavnoi Tserkvy na protsesi Spilky vyzvolennya Ukrainy i ii likvidatsiya u 1930 r', *Suchasnist'*, 7-8 (1988), 219.

say, the scenario under which they were designed SVU), Lyudmila Starytska-Chernyakhivska was included in the "SVU Committee", that is, among the primary leaders, along with Mykhailo Slabchenko, who was later to take a more modest role as head of the Odessa branch.[43] Next to the four candidates on the "church list" it was unmistakably written: "a number of people will be taken from the periphery".[44] Opposite "the candidates for the trial from the periphery", plus signs were written next to the names of specific individuals, while no marks were made next to others; or, for example, the plus changed to minus next to the name of the teacher S. Gudz-Zasulskogo. Perhaps these marks were made personally by Vsevolod Balitsky, who carefully read and made notes on other documents.

The memorandum "on the activity of the medical division of the SVU" explains the reason why, in his cryptogram of January 1930, Stalin paid so much attention to "medical crimes" which were attributed to those accused of involvement in the SVU. In this regard, it is advisable to cite the entire text from Stalin's cryptogram:

> "Put Kosior and Chubar on trial as well. When can we expect the trial of Efremov and co.? We think that the trial should be extended not only to the rebellious and terrorist acts of the accused, but also to the medical tricks aimed at murdering senior officials. We have no need to conceal from the workers the sins of their enemies. In addition, let it be known to so-called 'Europe', that the repression of the counter-revolutionary group of specialists trying to poison and kill Communist patients is, in fact, completely 'justifiable' and pales into insignificance in comparison with the criminal activities of these counter-revolutionary scoundrels. Our request is that an agreement be reached with Moscow on a plan of how to conduct the trial in court."[45]

Some of the Communist leaders were actually patients of the well-known doctor Andria Barbara, but during the investigation and the trial there was not a shred of evidence given to support the idea that he saw his Communist patients "not as patients, but as the enemy", and there was not a single case of malpractice or poisoning. The charges were therefore based solely on his alleged intentions. Thus, the doctor quickly had to confess to these and other "sins". These confessions were farcical in nature, but the verdict was far from

43 *HDA SBU, Kyiv.* – Case 67098 FP, vol. 238. *Orientirovochnyi spisok arestovannykh po Kievu, podlezhashchikh predstavleniyu na protsess* (Tentative list of arrested in Kiev which suppose to be present at the process), 1.

44 Ibid., 2.

45 Cited from: Tatiana Zamyatina, 'Iosif Stalin: "Vinonvykh sudit' uskorenno. Prigovor – rasstrel" Rassekrechen lichnyi arkhiv vozhdya narodov', *Izvestiya*, (June 11, 1992).

funny. He was sentenced to eight years in prison, but executed in October 1938 for having allegedly continued "counter-revolutionary activities" in the labour camp where he was serving his sentence.[46]

As a matter of fact, Efremov and Pavlushkov began their "confessions" as though they were a farce. However, following the SVU trial on the stage of the Kharkov Opera House (or the "theatre in the theatre" as it was described by contemporaries), where they were forced to act in strict accordance with the script and play their roles to the full, a tragic fate was to befall them. Both men remained behind bars and eventually died in prison, as did the vast majority of the other individuals involved in the SVU case.[47]

Highlighting the political motives of the SVU trial, Gerhard Simon noted that it is harder to resolve the issue that the indictment "was true, but only in the minds of the OGPU members".[48] Based on research into GPU internal documents, it can be argued that the SVU was not the organisation it was alleged to have been in 1929-1930.

At the same time, it is worth emphasising that the fact of the nonexistence of the SVU, resembling in any way the picture painted by the GPU, in no way rules out the fact that anti-communist sentiment and resistance existed. In fact, the fight was led by the academics Efremov and Grushevskii, though in the *groves of academe*, rather than by trying to overthrow the regime by armed struggle, the murder of communist leaders, the organisation of "imperialistic intervention" or the poisoning of communists and so on.

In summary, one can ascertain that in the years which have passed since the SVU trial, knowledge of the case's causes, progression and consequences has increased, which, in turn, has undermined a number of myths and unsupported claims. However, it is quite clear that there is still much to be done to overcome the politicisation of this topic and to bring it fully into the orbit of scientific taxonomy. As such, the reconstruction of a full picture of the events associated with this high-profile case must still remain something to come.

A comparative analysis with parallel cases in other regions of the former USSR (for example, the "Union for the Liberation of Belarus" case) is still notable by its absence. The processing and publishing of the as yet unpublished part of the verbatim report of the SVU trial, with a corresponding commentary, is long overdue. It might be worth conducting a project to

46 HDA SBU, Kyiv. – Case 67098 FP. *Kontrol'no-naglyadova sprava po kriminal'nii spravi A. O. Barbara,* 18.

47 See also: Prystaiko and Shapoval, *Sprava "Spilki vizvolennya Ukraini": nevidomi*, 85-9.

48 Gerhard Simon, *Nationalismus und Nationalitätenpolitik in der Sowjetunion: Von der totalitären Diktatur zur nachstalinschen Gesellschaft* (Baden-Baden, 1986), 599.

republish, in the form of several volumes, the first volume of the transcript along with these unprinted fragments of commentary and academic articles.

To this day, the fate of many defendants in the case remains to be established. After all, there are still unprocessed documents which reveal those in charge of putting together the case and the show trial on behalf of the central party authorities in Moscow and GRU officials. This is why a joint project with Russian researchers is being pursued. The hope remains that these questions will be answered in the years to come.

Iryna Ramanava

The "Lepel Case" and Regional Show Trials in the Belarusian Soviet Socialist Republic (BSSR) in 1937

I.

In 1937 and early 1938, the Soviet Union endured a wave of several hundred regional show trials. The first of these was held in the Lepel district of the BSSR (further: Belarus) in March 1937.[1] Leading administrative figures in the regions, village councils and collective farms were to stand accused of flagrant abuses of power and recourse to violence against the toiling peasantry. For the needs of the moment, the term "toiling peasantry" embraced

1 These trials are discussed in: Sheila Fitzpatrick, 'How the Mice Buried the Cat. Scenes from the Great Purges of 1937 in the Russian provinces', *Russian Review*, 52/3 (1993), 299-320; Sheila Fitzpatrick, *Stalin's Peasants: Resistance and Survival in the Russian Village after Collectivization* (Oxford, 1994), 286-312; Roberta Manning, 'Massovaya operatsiya protiv "kulakov i prestupnykh elementov": apogee Velikoi chistki na Smolenshchine', in Evgenii V. Kodin (ed), *Stalinizm v rossiiskoi provintsii: smolenskie arkhivnye dokumenty v prochtenii zarubezhnykh i sovetskikh istorikov* (Smolensk, 1999), 230-54; Roberta Manning, 'The Great Purges in a Rural District: Belyi Raion Revisited', in John Arch Getty and Roberta Manning (eds), *Stalinist terror: New Perspectives* (Cambridge, 1993), 168-97; Michael Ellman, 'The Soviet 1937 Provincial Show Trials: Carnival or Terror?', *Europe-Asia Studies,* 53/8 (2001), 1221-34; Evgenii V. Kodin*, Smolenskii naryv* (Smolensk, 1999); Viktor P. Danilov and Roberta Manning (eds), *Tragediya sovetskoi derevny: Kollektivizatsiya i raskulachivanie: V 5 t. Dokumenty i materialy*, vol. 5, 1937-1939 (Moscow, 2004); Nicolas Werth, *Terror i besporyadok* (Moscow 2010); Nicolas Werth, 'Provintsial'nye pokazatel'nye protsessy v SSSR vo vremya "Bol'shogo terrora" 1937-1938', in *Sudebnye politicheskie protsessy v SSSR i kommunisticheskikh stranakh Evropy: sravnitel'nyi analiz mekhaniznov i praktik provedeniya: materially rossiisko-frantsuzskogo seminara (Moskva 11-12 sentyabrya 2009 g.)* (Novosibirsk, 2010), 131-44; Julie Cassiday, 'Marble Columns and Jupiter Lights: Theatrical and Cinematic Modeling of Soviet Show Trials', *The Slavic and East European Journal*, 42/4 (Winter 1998), 640-60, 656; and others.

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not only collective farm labourers, but also individual farmers (who had not joined collective farms) who, until recently, had been classified as "kulaks" or pro-kulak elements. Being identified as real or potential enemies of the Soviet regime, there was to be no place for them in socialist society.

It seemed as if Stalin was squaring up to the ordinary peasant. Arrests and convictions in affairs similar to the "Lepel case" were made in the spring and summer of 1937, primarily in the border areas. The second stage came in autumn 1937 and winter 1938; now the scenario changed somewhat, with the local leaders being accused of violating the rights of farmers. In parallel, the NKVD, under the fateful Order No. 00447, was conducting its most extensive operation in terms of the number of victims, the main categories for such repression being "former kulaks" and anti-Soviet elements. Clearly, as these two campaigns were conducted simultaneously, they inevitably, mutually added fuel to the other's fire.

Finally, the designation "Lepel case" became something of an appellative term. The leaders of the USSR often used it in their speeches and articles during the years of the Great Terror, during the Moscow trials of the right-Trotskyite centre, it was used again in the 1950s in connection with the role of Georgy M. Malenkov in the organisation of mass repressions in Belarus.

Moscow was forced to take note of the Lepel district in December 1936 when reports began to trickle out of sabotage activities in the run up to the USSR's population census.[2] Here, in two rural municipalities (Staiskii and Pyshnyanskii), approximately two hundred and thirty people refused to answer the questions of census officials, almost all of whom belonged to individual farmers' families. The investigation determined that they were all "dissenters who had vowed silence", who considered (participation in) the census akin to being branded by the devil, and therefore called for the census to be shunned by all possible means, and to avoid any contact whatsoever with representatives of the Red Dragon of power in general. The NKVD made arrests among these counter-revolutionaries and dissenters; the alleged disseminators of anti-Soviet rumours and propaganda were made to stand trial, a show trial, in their district centre. The fact that a counter-revolutionary organisation aimed at sabotaging the activities of the Soviet regime and conducting anti-Soviet agitation was operating in the border region was reported in the Central Committee of the Communist (Bolshevik) Party of the Soviet Union (further: the CPSU) and to Stalin personally.[3]

2 The census was conducted on the night of 5 to 6 January 1937.

3 Iryna Ramanava, 'Klyaimenne Chyrvonaga drakona: Usesayuzny perapis nasel'nitsva 1937 goda i yago traktobouka u syalyanskim dyskurse', *Arche*, 3 (2012), 246-62.

The fact that these events took place in a border area was deemed to be absolutely unacceptable; such a region, in light of the measures which had been taken previously, had to be exemplary in all respects.[4] It turned out that the Soviet administrative and Party organs had not undergone proper training on the eve of the census. In fact, all of their work with the population at large might be summed up in the bureaucratic language of the time as "crude administration" and a "massive violation of revolutionary legitimacy".[5] It was found that during 1935, in that same area, the People's Court had imposed various penalties on some six hundred and thirty people, part of them were arrested and convicted for failing to settle their liabilities regarding statutory public levies; in 1936, the figure was four hundred and sixty-three. The levies that had been imposed took no account of the true capacities of peasants to meet the demands put upon them; but failure to pay and comply resulted in the imposition of huge fines, the non-payment of which, in turn, led to the confiscation of every asset and the total ruin of private farmsteads. Moreover, expropriations were accompanied by verbal and physical abuse and bullying.

Thus, instead of simply eliminating "counter-revolutionaries", the authorities took note of their miserable situation caused by the wrong and inappropriate actions of their district leaderships. Naturally, this made it possible once again to shift the blame from the centre to the periphery. It now appeared that the population had boycotted the census mainly because of the local authorities who, instead of reaching out to the people in an effort to explain and educate them, paid more attention to defaults in settling tax liabilities or other statutory public levies. Moreover, the authorities carried out their putative duties "in violation of revolutionary legitimacy." This is the essence of what came to be known as the "Lepel case".

II.

The "Lepel case" became something of a model and *cause celebre* throughout the Soviet Union. The decision of the Central Committee of the CPSU of February 8 in the "Lepel case" highlighted the failure to engage in party political work in the border regions of Belarus. On February 18, the Belarusian Central Committee adopted the following resolution: responsibility for "the gross distortion of Soviet laws and direct wilfulness in respect of a number of individual and collective farms" in the Lepel district was laid at the door of

4 For measures to consolidate the border regions see: Iryna Ramanava, '"Zona": Belaruskae pamezhzha pa savetski bok dzyarzhaunaga kardonu u 1930 gady', *Spadchyna*, 1-2 (2001), 111-35.

5 NARB (National Archive of the Republic of Belarus). F. 4-p. Op. 21. D. 983. L. 34.

the senior leadership of the republic because it was noted that a similar situation existed in other areas. In this regard, members and candidate members of the Belarusian Central Committee were seconded to all border areas; they were to hold closed party meetings and report on the shortcomings in the work of the Belarusian Central Committee and Council of People's Commissars in the governance of the border regions and districts, and they were to identify all cases deemed to be akin to the situation in Lepel.[6]

In accordance with the decision of the Central Committee of the CPSU of February 22, the following were indicted: the Chairman of the Lepel Regional Executive Committee, Semashko; the Secretaries of the Lepel district committee Party, Pantsegel and Yushkevich; the Head of the Financial Department, Rusanov; the District Commissioner of the Grain Harvesting Committee, Mikhailov; the Chairman of the Staiskii Village Council, Gaisenak. Members of the Republic's leadership – Secretaries of the Belarusian Central Committee B Nicolay Gikalo[7] and Daniil Volkovich,[8] the Chairman of the Council of People's Commissars BSSR, Nicolay Goloded[9] – were accused of "a lack of socio-political work and political blindness." Control and responsibility over the execution of the resolution of February 22 were jointly entrusted to the Deputy Chairman of the Party Control Commission subordinated to the Central Committee of the CPSU and at the same time to Yakov Yakovlev, the Head of the Agricultural Department of the Central Committee.

On March 4, 1937, an open show trial began in Lepel. Events in the area were reported by the allunion newspapers *Pravda* and *Izvestia*. Items in *Pravda* took the form of informational news reports, as signals to initiate work on uncovering analogous cases in other areas. The series of articles in *Izvestia* evinced a different approach.[10] Here the authors, the Tur brothers, created a whole series of caricatures of Soviet petty tyrant-managers: everyone who was involved in the case was asked the same question about the bounds of what is acceptable, or, more precisely, about their absence.

The script of the entire proceedings was simple: bad local chiefs violated Stalin's Constitution, abused power, overburdened and maltreated the peasants. This was recognized by Stalin and he stood to protect them.[11] Local

6 NARB. F.4-p. Op. 1. D. 10979. L. 28.

7 Chairman of the Central Committee of the Communist Party (Bolsheviks) of BSSR from 18 January 1932 to 18 March 1937.

8 Chairman of the Central Committee of the Communist Party (Bolsheviks) of BSSR from 3 August 1934 to 10 June 1937.

9 Chairman of the Council of People's Commissars BSSR from 1927 to 1937.

10 *Izvestiya* (March, 6-11, 1937).

11 Fitzpatrick, *How the Mice Buried the Cat*, 299-320; Fitzpatrick, *Stalin's Peasants: Resistance and Survival in the Russian Village after Collectivization*, 286-312.

leaders were made to stand trial, and the peasants stood witness as the main accusers. Leaflets detailing the facts of the mass violations of revolutionary legitimacy in the Lepel district were sent to all regional and district committees throughout the USSR – for information and so that appropriate action might be taken locally. Similar cases to that in Lepel were found in all seventeen Belarusian districts that were investigated.

Prison terms for those convicted in Lepel were moderate – from six months to two years. For similar cases in the Shyraevsk district of the Odessa region, sentences were tougher.[12] The question of the "Lepel case" was again considered at the March Plenum of the Belarusian Central Committee, at which the recommendation of the Central Committee of the CPSU of March 14, to appoint Vasily Sharangovich as First Secretary in Belarus, was announced. In his speech, Sharangovich stressed that the excesses that had been uncovered were not merely matters relating to workers in those places, but staff in positions of power in the central apparatus had to be vetted. At the same Plenum, the Chairman of the Belarusian Council of People's Commissars, Goloded, and the Chairman of the Belarusian Central Election Commission, Alexander Chervyakov,[13] were accused of opportunistic right-wing mistakes in the past.[14]

To analyse and investigate these "subversives", Moscow dispatched to Minsk two eminent figures: Deputy Chairman of the Party Control Commission of the Central Committee of the CPSU and concurrently Head of the Agricultural Department of the Central Committee, Yakov Yakovlev, and the Head of the Department leading Party organs of the CPSU, Malenkov.

Yakovlev had been appointed Head of the Commission established by the Central Committee's Politburo to look into the results of the "Lepel case". He was responsible for a wide range of measures, including overcoming cultural backwardness in the border areas. Upon arrival in Belarus, Yakovlev made a point of visiting the Lepel district personally.

Eight days after their stay in Belarus, Malenkov and Yakovlev presented Stalin a draft resolution of the Central Committee of the CPSU "On the

12 'Sud nad vinovnikami bezzakonij v Shirayevskom rajone: Odesskaya oblast', *Pravda*, (June 15, 1937).

13 Chairman of the Central Committee of the Communist Party (Bolsheviks) of BSSR from 1924 to 1937.

14 On June 14, 1937, Goloded was summoned to Moscow and arrested, and on June 21 the Belarusian People's Commissar of Internal Affairs, Berman, reported to the People's Commissar of Internal Affairs of the USSR, Yezhov, that during the investigation, Goloded had committed suicide by jumping from the fifth floor window of the NKVD's building. After a series of accusatory speeches, organized against him during the XVI Congress of the Communist Party of Belarus (10-18 June 1937), Alexandr Chervyakov committed suicide on 16 June 1937.

leadership of the Communist Party (Bolsheviks) of Belarus." The draft was approved on June 27, 1937. In accordance with their resolution, the First Secretary of the Belarusian Central Committee, Sharangovich, Second Secretary Deniskevich, and Deputy of the National Committee of Belarus Nizovtsev, were removed from their posts as enemies of the people. Their cases were transferred to the NKVD. The same day, Yakovlev was appointed First Secretary of the Central Committee of the Communist Party (Bolsheviks) of Belarus.[15]

Yakovlev and Malenkov stage-managed the so-called firing squad at the July Plenary Session of the Belarusian Central Committee in 1937. Deficiencies in the development of agriculture, mass discontent and peasant protests against the tax policy, the failure of numerous enterprises to achieve their targets, could all be put down to the counter-revolutionary actions of the anti-Soviet underground, whose goal was to separate Belarus from the Soviet Union together with the defeat of the USSR in any future war. Needless to say, this Plenary Meeting became an interrogation session of District Secretaries and Chairmen of District Executive Committees, who were called to the podium to deliver their reports. Of the twenty-four speakers at the Plenum, twenty were arrested and executed.[16]

According to the resolution of the Plenum, the Party organisations were invited to focus their efforts and make their priority the quick and decisive liquidation, indeed, the merciless deracination of destructive Polish agents, wreckers and saboteurs.

A. Volkov[17] and A. Levitsky[18] were appointed first and second Secretaries of the Belarusian Central Committee; it was they who were given the task to carry out this brutal elimination. After the Plenum, the Belarusian purge began – of its Central Committee, its Council of People's Commissars, its Central Executive Committee, the People's Commissariats, and its district organisations.

In the wake of the "Lepel case", it also became necessary to eliminate the consequences of excesses and violations of revolutionary legitimacy in rela-

15 Chairman of the Central Committee of the Belarus Communist Party from 29 June to 8 August 1937. On 12 October, during proceedings of the Plenum of the Central Committee of the All-Union Communist Party (Bolsheviks) (October session, 1937), Yakovlev was arrested.

16 *Reabilitatsiya: kak eto bylo: Dokumenty Prezidiuma TsK KPSS i drugiye materially* (Rehabilitation: What it Was Like: Documents of the Presidium of the Central Committee of the CPSU and other materials) in 3 vol. Vol. 2 (February 1956 – beginning of the 1980s) (Moscow, 2003), 312-3.

17 Chairman of the Belarusian Central Committee from 11 August 1937 to 18 June 1938.

18 Chairman of the Belarusian Central Committee from 11 August 1937 to 30 March 1938.

tion to toiling peasants. Probably, this step was made with the aim of calming the individual farmers (so called "kulaks"), who had recently been freed from the stigma of being "disenfranchised" ("*lishenec*") and were very soon to take part in the first general election by secret ballot, which they were promised by the world's "most democratic" constitution, the Constitution of 1936.

On August 2, 1937, the CPSU and the Soviet Belarusian Council of People's Commissars adopted a decree "On assistance to collective farmers of the Belarusian SSR and on the elimination of the effects of sabotage in the structure of collective farms. On assistance to the collective farm peasantry of Belarus and on the liquidation of the consequences of wrecking in collective farms". According to this decree, farmers had to be provided with plots of land in accordance with the established norms (0.5 hectares per farm). It was found that more than a third of them had significantly less.[19] It appeared that justice had been done: now collective and individual farmers were allowed to freely graze cattle on forest land belonging to the state; this was of local significance, and the cultivation of land in 1938 was reduced by some 300,000 hectares. Also, shortfalls in meat, milk and potato quota supplies, and arrears in payments for Machine and Tractor Station (MTS) services, were written off. The milk delivery plan for collective farms was reduced by half – to fifty five litres a year per cow.[20] Significant benefits were given to individual farmers upon joining collective farms.[21]

It was stressed that this decision was taken on the initiative of Comrade Stalin. All Party and government organisations were ordered to hold discussions in all collective and state farms, with individual farmers and "the entire Belarusian people, and resolve to immediately execute the decree".[22] In turn, the local government units reported to the centre that the decree had been "greeted by the working masses of Belarus with great enthusiasm and had caused a huge rise in productivity among farmers with a rising tide of individual peasants joining collective farms and an intensified hatred of enemies of the people, the gang of national fascists and agents of foreign fascist states active in Belarus."[23]

Clearly, the decree was intended to have a mobilising effect – to engender a mass desire to form collective farms. In Soviet Belarus, there were still more than 100,000 farms running on an individual basis. However, by September

19 By 7 October of the same year, according to official data, 38,300 hectares of adjoining land had been transferred to 245,000 collective farms (NARB. F. 4-p. Op. 1. D. 11033. L. 144).
20 NARB. F. 4-p. Op. 1. D. 11033. L. 341-2.
21 NARB. F. 4-p. Op. 1. D. 11033. L. 342-3.
22 NARB. F. 4-p. Op. 1. D. 12099. L. 337.
23 NARB. F. 4-p. Op. 1. D. 12099. L. 337.

1, 1937, only 1,925 such farms (just a few in each area) had joined up with collective farms.[24]

On the basis of this decree (dated August 2, 1937), all cases of those convicted in 1934-1937 for failure to fulfil their statutory obligations to supply natural produce and make monetary payments were put under review; likewise subject to review were cases of violations of forestry rights and regulations, and the unilateral seizure of land by collective farmers and individual farmers. The ensuing review of cases resulted in the release from custody of those wrongly convicted "of misappropriating agricultural and collective farm assets".[25]

On August 3, 1937, all secretaries of district and regional Communist Party committees and the Central Committees of all member soviet socialist republics were sent a directive (signed by Stalin), which reported on the "subversive activities of *enemies of the people* in the agricultural economy, whose activities were aimed at undermining the collective farms and arousing dissatisfaction with the Soviet government among collective farmers, through abuse of the system and thereby making a mockery of it." This directive noted, in particular, that local leaderships were mistaken in thinking that the elimination of sabotage might be carried out only by the secret procedures of a range of NKVD organs, and that farmers need not be mobilized to combat sabotage. In accordance with this directive, it was incumbent upon each district to organise two to three show trials against enemies of the people, parasites, who had infiltrated the district organs of the Party, and government and land agencies.[26] Those found guilty were to be sentenced to death. Stalin emphasised that sabotage was destroying the collective farm economy and inciting farmers against the Soviet regime.

Regional show trials became an integral part of the mass operations of 1937-1938,[27] creating a political climate of fear and hysteria on the ground.

In early December 1937, with the implementation of the resolution of the Central Committee and the Belarusian Council of People's Commissars of August 2, 1937, a sharp increase in collective farm membership was

24 NARB. F. 4-p. Op. 1. D. 11033. L. 343.

25 NARB. F. 4-p. Op. 21. D. 1719. L. 3.

26 *Lubyanka: Stalin I Glavnoe upravlenie gosudarstvennoi bezopasnosti NKVD: Arkhiv Stalina: Dokumenty vyschikh organov partiinoi I gosudarstvennoi vlasti 1937-1938*, (Moscow, 2004), 298.

27 Most of the show trials held in the regions took place in a relatively short period – between autumn 1937 and winter 1938, which chronologically coincided with the peak of operations conducted by Order No. 00447, which officially began on August 5, the main victims of which were the peasants. In this Belarusian operation, 24,209 people were convicted, of whom 6,869 were sentenced to death; Marc Junge, Gennadij A. Bordyugov, and Rolf Binner, *Vertikal' bol'shogo terror* (Moscow, 2008), 522.

reported in Belarus, as enemies of collective farms were unmasked at public meetings.[28]

However, the district show trials were not limited to collective farms and district leaderships. On September 10, 1937, Stalin's and Molotov's directive landed on the doormats of local authorities stating that "each district and each region should hold between two and three show trials of parasites so as to protect the harvest" with those accused being sentenced to death.[29] On October 2, Stalin and Molotov adopted a directive "on sabotage and show trials in the field of animal husbandry". It put forward the demand to "organise in each republic, district and region, three to six open show trials involving peasant masses with wide coverage in the popular press."[30]

The script of the "Lepel case" served as the basis of the show trials, but the script was now revised in accordance with the requirements of the day.

In the course of the campaign and during the trials themselves, a huge amount of evidence of violence against the peasantry was collected: confiscation to the point of complete destruction, the use of physical intimidation (beatings, torture, hanging by the legs from the ceiling), the use of weapons, night raids, etc. But now, in another serious accusation against the local authorities, came the resolution of August 2, which they had ignored, being that they had disregarded the allocation of land to the peasants.

Local leaders knew that the individual peasant with his own plot of land (who by force of habit was still called a kulak) had no place in the new society. They were also aware that the percentage of collectivisation was growing not only due to individual farmers joining the collective farms, but also because of the reduction of the overall number of private farmers as a whole. This meant that all methods were now deemed acceptable.

Here is a fairly typical description of how the campaign was carried out: "The seizure of the assets and property of individual farmers was akin to the utter destruction and annihilation of their farms. Prior to all this, no inventories of the assets or property of individual farmers had been drawn up; without any rulings or decisions on the part of the village councils, they literally seized the properties of individual farmers in their entirety, their movables, buildings, livestock, feedstuff, agricultural equipment, tools, clothing, footwear, domestic inventory, linen. In some cases, individual farmers had their shoes forcibly removed and their shirts torn off their backs and taken away; likewise, the doors of their houses were taken off their hinges and taken away, fence posts were cut down and fences smashed … The smashed

28 NARB. F. 4-p. Op. 1. D. 11033. L. 344.
29 *Tragediya sovetskoj derevni*, 452.
30 *Tragediya sovetskoj derevni*, 486.

pieces of buildings, usually without being sold or paid for, were transported to the yard of a collective farm where they disappeared in a matter of seconds, at the hands of all who were willing to grab a piece; cattle were transferred to collective farms without compensation, and clothing and food supplies were in part stolen and in part, without any acknowledgement or thought of the inventory, seized and transferred to cooperatives and sold off to anyone who wished to have them."[31]

All the accused, as evidenced by the available case materials, were indeed guilty of the charges laid against them. Moreover, the facts appearing in the materials demonstrate outstanding adroitness in escalating violence in the countryside. Out in the villages, regional Soviet agriculture and collective farm leaders behaved like an army of occupation in hostile territory.

Thus, the "Berezinsk case" illustrated, for example, that the failure of the collective farmer Trofim Filichenok to fulfil the requirement of the chairman of the village council (soviet) to sell to the state over three quintals of grain over and above the previous delivery quotas, and payments that had already been made, led to the utter ruin of Filichenok's property. A group of village council workers appeared at night at his property, broke all the locks, and ransacked all the buildings. Without any grounds for so doing, they confiscated 40 kg of flax fibre, 8 kg of hemp, cow hides, 3 bags of grain, 1½ pounds of clover seed. Filichenok's wife was beaten as she attempted to protect the contents of a chest. As a result of the incident, taxes amounting to a further 900 roubles were imposed upon the Filichenok farm with the demand that they be paid within 24 hours. On the same night, a similar seizure of property took place at the abode of the collective farmer Timofei Nekhai. Severe beatings of collective farmers took place and the female collective farmer Podolyako Evdokiya was beaten by the collective farm chairman with such force that she "fell ill with lung disease". The secretary of the village council, Dmitrov Nikolai, and a member of the village council, Slabko Nikifor, brutally beat Stepan Zhukovsky, an individual farmer, until he was covered in blood because he refused to go with them to the village council. The chairman of the village council, Shishenok, decided to help himself to a horse while at the homestead of the individual farmer Markevich for no reason. At the time, the horse was carrying firewood. Attempts to protect his property ended when Shishenok struck Markevich on the head with an axe and took his horse.[32] At the end of 1935, the head of the district NKVD department, Fedorovich, arrived in the village of Belavichi together with five or six Red Army soldiers armed with rifles to eliminate the failure in harvest-

31 NARB. F. 4-p. Op. 21. D. 1053. L. 6-10.
32 NARB. F. 4-p. Op. 1. D. 13232. L. 19-22.

ing flax. He ordered all individual farmers to convene. But not a single man came to the meeting and, out of fear, they hid in the woods. Threats and insults were then directed at their wives.[33]

The number of examples extended and continued throughout these and all other areas.

In the course of their investigations and trials, former leaders, now the accused (who were not "broken" by months of brutal interrogation), usually chose the same line of defence: without denying the crimes of which they were accused (abuse of power, brutality, extortion), they refused to admit that they acted with counter-revolutionary intent[34] and blamed their immediate superiors ("who had forced them to act in this manner") or that they were misguided perpetrators ("who misunderstood their tasks and overdid matters in attempts to implement them"). And so, even if the accused pleaded guilty to some specific charges, they denied hostile collusion, resorting to beatings and threatening to use weapons.

Now, however, such behaviour of representatives of the district, Soviet administrative and collective farm authorities qualified as actions commissioned on the instructions of saboteurs, traitors and Polish spies to disrupt the organisational and economic consolidation of the collective farms, to foster bitterness among collective and individual peasants against the Soviet regime.

Since in the course of investigations and trials the prevailing view was that the district leaders were enemies, spies and traitors, the logical verdicts in such matters, in accordance with the Criminal Code at the time, was the imposition of the ultimate penalty, namely execution (as, incidentally, also recommended by Comrade Stalin in his decision of August 3, that two or three accused people should be executed in each area).

The "Lepel case" acquired fresh status when, in September 1937, the NKVD "uncovered" and arrested "a whole array of spies and saboteurs" in that district, among them the Head of the Lepel district NKVD department, Ermolaev. Also "it was established" that the Lepel trial, which took place in 1937, was not the result of negligence on the part of the former leaders of the area, a charge on which they were tried, but rather the result of a right-wing, anti-Soviet sabotage organisation in Belarus."[35] Participants in the affair were exposed, most notably the Secretary of the Regional Executive Committee, Semashko, and sentenced to death.[36]

33 NARB. F. 4-p. Op. 1. D. 13232. L. 28-9.
34 Werth, *Provintsial'nye pokazatel'nye protsessy v SSSR*, 141.
35 NARB. F. 4-p. Op. 21. D. 1410. L. 57.
36 NARB. F. 4-p. Op. 21. D. 1410. L. 57

Whole tiers of regional organisations were liquidated in the course of the campaign: in Belynichi and Rudensk, all members of the district authorities were expelled from the Party and arrested on the authority of Central Committee representatives; whole district committees were locked up with the keys being handed over to the district NKVD authorities. The same thing happened in Liozno, where the key was given to the guard. Immediately after a meeting of Party activists in the town of Bobruisk, the second Secretary of the Belarusian Central Committee, A. Levitsky, and B. Berman of the NKVD, arrested seventeen district officials (including the public prosecutor, the chairman of the District Executive Committee, persons responsible for procurements) in the course of one night.[37] In some areas, not only were all members of the Party organisation arrested, but also the regional executive committee – thus, in some districts, Bolshevik and Soviet power and rule were simply eliminated!

Trials and proceedings abounded aplenty in an endless stream, one after another, accompanied by resounding publicity in both the national and local press.

The Belarusian show trials were held in no less than sixteen districts;[38] in similar cases different sentences were received by leading figures in at least twenty-five regions of Soviet Belarus; in some areas the entire composition of several leaderships was arrested. In general, in the period 1934-1937, throughout Belarus, more than five hundred village council chairmen and three thousand collective farm chairmen were brought to court.[39]

The means employed to organise such regional show trials can be deduced from the materials and case files of the Dubrovno district.[40]

In only a matter of days after the arrest of Myshalov, the Secretary of the District Committee, the former deputy prosecutor of Belarus, Zakharin, and the investigator of particularly important cases, Altshuler, arrived in Dubrovno. The two of them had studied the register of party members of the district staff and on that basis selected their nominations for show trials and exemplary punishment. One candidate deemed to be suitable for such treatment was the former commissioner of the Committee for Requisition of Grain, Samulevich. He was born in Poland and had served in the Polish

37 NARB. F. 4-p. Op. 1. D. 14689. L. 5-6.
38 NARB. F. 4-p. Op. 1. D. 14647. L. 59-79.
39 NARB. F. 4-p. Op. 21. D. 1015. L. 136, 144.
40 The National Archives of the Republic of Belarus in the fund of the Special Board of the Supreme Court has only two volumes of the five-volume case relating to the Dubrovno area and a separate case relating to the Secretary of District Committee, Myshalov. There are no materials whatsoever relating to courts of other regions. However, the available data, though limited, are rather representative. (NARB. F. 188. Op. 1. D. 3200 b; D. 3202 a).

army as an ordinary conscript. The fact that he had not worked in this field for more than two years was of no avail.[41] The registration card of Radziwinowicz, Director of the MTS, recorded that he descended "from some hereditary landowner". Materials were updated at the Bureau of the District Committee; in respect of the check on the MTS, materials that had already been discussed almost a month previously served to let Radziwinowicz off with only a reprimand at the time.[42]

During the investigations and court proceedings it was found to be an established fact that, during the period 1935-36, a counter-revolutionary band of saboteurs, meaning the above-mentioned Myshalov, Samulevich, Radziwinowicz, and the former District Finance Department manager, Bragin, were found guilty of aiding and abetting such activities; the chairmen of the village councils and collective farms of Drebezava, Orlov, Kirpichenko and Grischenkova were deemed to have been guilty of "counter-revolutionary sabotage aimed at the destruction of collective farms, to create antagonism between collective and individual farmers, to provoke and foment disaffection between Party and working peasantry ranks."[43]

The show trial held in the Dubrovno district court lasted from November 28 to December 2, 1937 with sixty three people summoned as witnesses.[44] On December 1, a rally of workers, employees and tractor drivers of the Dubrovno MTS was held. Those present at the rally "sent a message of rebuke and cursed the enemies of the people who were guilty of sabotage and counter-revolutionary activities in each area of socialist construction" in the district, and demanded that the Special Board of the Supreme Court of the BSSR sentence "vile traitors … to be shot"; they also undertook to increase productivity, promised "to intensify Bolshevik revolutionary vigilance to even higher levels at every job site, to identify and expose the remnants of counter-revolutionary elements and to eliminate the consequences of sabotage."[45] It is clear that these propaganda clichés were the work of a trained hand, of one accustomed to writing such reports. But obviously, the existence of such sentiments cannot be denied.

By verdict of the Special Board of the Supreme Court of the BSSR on December 2, 1937, the following sentences were delivered: the first secretary of the district committee, Solomon Myshalov, and the chairman of the Committee for Requisition of Grain, Joseph Samulevich (both under Article 69 of the Criminal Code of the BSSR – anti-Soviet activity) – death sentences;

41 NARB. F. 188. Op. 1. D. 3202 a. L. 238 -240.
42 NARB. F. 188. Op. 1. D. 3202 a. L. 235-37.
43 NARB. F. 188. Op. 1. D. 3202 a. L. 2.
44 NARB. F. 188. Op. 1. D. 3202 a.
45 NARB. F. 188. Op. 1. D. 3202 a. L. 60.

the Director of the MTS, Nikonor Radziwinowicz, (under Article 69 of the Criminal Code of BSSR) – twenty years imprisonment and disenfrachisement for five years. T. F. Grishchenkov (Article 196.1 of the Criminal Code – Abuse of power) was sentenced to three years in a labour camp without disenfranchisement; N. F. Kirpichenko (Article 197.b – Abuse of power, and Article 196.1 of the Criminal Code of BSSR) – sentenced to five years in a labour camp, with disenfranchisement for three years after serving his sentence; N. N. Bragin on Article 69 of the Criminal Code was acquitted by the court, but on the basis of Article 196.1 of the Criminal Code was sentenced to ten years in a labour camp with disenfranchisement after serving his sentence of five years; the chairmen of village councils Yefim Orlov and E. Drebezov (Under Articles 196.1 and 197 b. of the Criminal Code of the BSSR) were sentenced to ten years in a forced labour camp, each with disenfranchisement after serving his sentence for five years. The verdicts were classified as final and non-appealable.[46] But they were revised three more times.

Subsequently these purges reached the judiciary and prosecutors themselves, who were accused of the same criminal activities as the district managers, namely, "active anti-Soviet activity, as expressed in the application of mass illegal repressions of workers in town and country"; they had "violated revolutionary legitimacy with the aim of causing disaffection on the part of workers, and simultaneously had also dismissed and halted cases against enemies and saboteurs.[47]" Their links with the Trotskyists and Polish Intelligence were "established". In a period of three months, district committees and organs of the NKVD "exposed as enemies of the people together with those associated with them" eleven district public prosecutors and twelve judges. The cases of Glezerov and Silverstov as well as of Kudelsky and Sukhanov were transferred to the NKVD. This begs the question as to whether there is a need to check all the personnel selected by them.[48]

III.

The carnival of district show trials[49] was in full swing, but suddenly the January Plenum of the Central Committee of the CPSU (1938) raised the

46 NARB. F. 188. Op. 1. D. 3202 a. L. 145.

47 NARB. F. 4-p. Op. 21. D. 1389. L. 304.

48 NARB. F. 4-p. Op. 21. D. 1015. L. 136, 144.

49 These trials were described as a carnival by Sheila Fitzpatrick, see Fitzpatrick, 'How the mice buried the cat'; Fitzpatrick, *Stalin's Peasants*; however, numerous researchers do not agree with such an analysis, for example, Ellman, 'The Soviet 1937 Provincial Show Trials: Carnival or Terror?', 1121-233.

question of the dangers of such trials. A review of cases began; sentences were reduced and some trials, as prosecutor Novik noted, "those who were of importance", were altogether aborted.[50]

In November 1938, after the resolution of the Belarusian Council of People's Commissars and the Central Committee of the CPSU "On the arrests, the prosecutor's supervision and conduct of the investigation", which actually meant curtailing massive repressive actions, the problem was reformulated. The "Conclusions of the Commission of the Central Committee of the Communist Party (Bolsheviks) of the BSSR on the acceptance and transfer of cases to the Prosecutor's Office of the BSSR" (1939) stated as follows: "The Prosecutor's Office of the BSSR adopted the provocative practice of instigating a number of cases against leading Party and local *soviet* (council) workers, who were arrested without justification and accused of counter-revolutionary crimes."[51] The apparatus of both the Prosecutor's Office and the Supreme Court as well as the entire vertical chain of judicial and prosecution authorities were required, in accordance with this resolution, to engage in an immediate purge of hostile elements.

Otherwise, if initially judges and prosecutors had been involved and were complicit in the "violation of revolutionary legitimacy in order to cause disaffection on the part of working people", now their colleagues in this profession were accused of "the provocative practice of instigating proceedings against leading Party and local *soviet* workers". NKVD officers were also accused of making groundless arrests of district leaders.[52]

On June 18, 1938, P. Ponomarenko was sent in from Moscow to take over as Secretary of the Belarusian Central Committee. On February 7, 1939, he addressed a memorandum to the Central Committee of the CPSU on the work of the Supreme Court and judicial organs of Belarus, which accused the Supreme Court and the Prosecutor's Office of inaugurating proceedings on a massive scale, on the basis of provocative material against Party and local *soviet* workers. He noted that "often, honest Party and local *soviet* employees were condemned to death and shot for excesses in relation to individual farmers, on the basis of the evidence of individual farmers whose hostile activities were later exposed."[53] Ponomarenko described the Chairman of the Supreme Court of the BSSR, Obushkevich, as guilty of the failure to take steps to eliminate the after-effects of the damage that was wrought thereby, and stated that as a result of the activities of Obushkevich, the Supreme

50 NARB. F. 4-p. Op. 1. D. 14774. L.11.

51 NARB. F. 4-p. Op. 21. D. 1722. L. 3.

52 The former head of the NKVD Senno Gordeev was sentenced to ten years in a labour camp on May 11, 1939. NARB. F. 4-p. Op. 21. D. 1807. L. 78-86.

53 NARB. F. 4-p. Op. 1. D. 14637. L. 175.

Court appeared to be clogged up with hostile and suspect elements.[54] In addition, Biksan, who worked as his deputy, was arrested; he was a Latvian, a foreigner who, "according to all material evidence, had been exposed as a member of a counter-revolutionary nationalist organisation".[55]

On July 26, 1939, the Belarusian Central Committee examined the case of the Prosecutor of the Belarusian SSR, S. Novik. Ponomarenko noted that Novik, who had worked alongside B. Berman and A. Nasedkin – former NKVD leaders, who had been unmasked as enemies of the people – was himself also responsible for the provocation and instigation of cases.[56] But Ponomarenko particularly stressed the harm resulting from the conduct of district show trials: "… surely we should not have held such show trials at a time when we had embarked on establishing discipline in the countryside … All these show trials merely served to do was to intimidate people, to wipe out swathes of staff from the district organisations, frighten people so that they would no longer work with individual farmers, and they failed to require the fulfilment of state obligations."[57]

In his defence, Novik made an exceedingly important comment: "The mass arrests were mostly instigated by the military prosecutor's office, because most arrests in Belarus were made on the basis of Article 68 "For espionage".[58] However, the fact that Novik found himself in the service of Berman and Nasedkin was deemed to have been established.[59]

On August 5, 1939, Novik wrote to Ponomarenko that he was not guilty because the majority of criminal cases against the district's employees after the famous "Lepel case" had been initiated prior to his arrival in Belarus.[60]

In his communications with the Central Committee of the CPSU in Moscow, Ponomarenko reported that the former leadership of the Republic was guilty of a mass cull of the district staff. So, in a report dated June 7, 1939, he wrote that "the so-called regional show trials" were conducted in Belarus on the direct instructions of the Central leadership of the Belarusian Communist Party.[61] In his memorandum of July 3, 1939, Ponomarenko portrayed this process as a shift in the tactics of the enemies of the people in the ranks of the Party and Soviet leaders in Belarus: first, by their policy they sought to engender bitterness among individual farmers and peasants (by impos-

54 NARB. F. 4-p. Op. 1. D. 14637. L. 175.
55 NARB. F. 4-p. Op. 1. D. 14637. L. 176.
56 NARB. F. 4-p. Op. 21. D. 1501. L. 1.
57 NARB. F. 4-p. Op. 21. D. 1501. L. 2.
58 NARB. F. 4. Op. 21. D. 1501. L. 31.
59 NARB. F. 4. Op. 21. D. 1501. L. 48.
60 NARB. F. 4-p. Op. 1. D. 14774. L. 10.
61 NARB. F. 4-p. Op. 21. D. 1522. L. 1, 3, 4.

ing excessive tax burdens, by violating the law, destructive activities, etc.) and after the decision of the Central Committee of the CPSU in respect of the "Lepel case", they changed tactics and went in the direction of creating privileged conditions for individual peasants in comparison with those of collective farmers (restitution of property, financial compensation, restoration of former land-use boundaries, non-payment of arrears, transport work hire preferences, work in regional enterprises).[62] This led to the fact that the rural masses, fearing reprisals, generally ceased "to work with individual farmers".[63] According to Ponomarenko, such a calculation was made on the grounds of a call from the ranks of collective farmers favouring the restoration of individual farming. In evidence, he noted that in early 1938, individual farmers consolidated their farmsteads, and the growth in collectivisation had almost come to a halt.[64]

Now Ponomarenko stressed that among those arrested were honest Party members, totally dedicated Party and local council officials whose "errors or failures in the performance of tasks in practice had resulted in charges of sabotage and espionage …"[65] Thus, actions that a little earlier had been denouced as "sabotage" were now deemed to be "errors or failures in the performance of tasks" by Ponomarenko.

Then he announced the following figures: twenty-four district party secretaries had been expelled from the Party and removed from their work; thirty-two secretaries of the district committees of the Party had been simply removed from their work with the imposition of various Party penalties; about thirty-five district committee secretaries had been arrested (here he noted that in their vast majority, they had already been fully rehabilitated). Approximately fifty chairmen of district executive committees had been removed from their positions and arrested (the majority had been released and rehabilitated). A significantly greater number of district heads of land and financial departments had been arrested. Those arrested also included agronomists, directors of MTSs, heads of District Agricultural Sections, district commissioners belonging to requisitions committees, scientists, etc.

Authorized members of the Central Committee, Zemtsov, Aksyonov and others, who conducted local raids and organized the campaign, were declared slanderers and provocateurs.[66]

Next, Ponomarenko described the mechanism of "revelations" and "exposure" at meetings of the Bureau of the Central Committee: "Commu-

62 NARB. F. 4-p. Op. 1. D. 14689. L. 1.
63 NARB. F. 4-p. Op. 1. D. 14689. L. 2.
64 NARB. F. 4-p. Op. 1. D. 14689. L. 3.
65 NARB. F. 4-p. Op. 1. D. 14689. L. 4.
66 NARB. F. 4-p. Op. 1. D. 14689. L. 5.

nists, … whose guilt was not confirmed in any way, were asked the following questions: How much had they received from (enemy) intelligence? Who recruited them? Who did they recruit? Had they belonged to a counter-revolutionary organisation for a long time?"[67] He concluded: the enemy infiltrated the NKVD "by hiding behind sensational revelations, had carried out abominable work" – and this had resulted in the persecution of innocent people.[68]

A number of ongoing cases against district leaders were halted[69] and cases which had already ended were made subject to review.[70] Actions previously classified as subject to sanctions under Article 69 of the Criminal Code were now reassigned to Articles 196-1 and 197 of the Criminal Code, etc. Death sentences were commuted to imprisonment, and terms of imprisonment were reduced. Thus, on January 17, 1938, the Judicial Review Board of the Supreme Court of the USSR reviewed the cases of the Dubrovno district leadership which resulted in Myshalov's and Samulevich's death sentences being commuted to fifteen and ten years' imprisonment respectively. The case of Radziwinowicz was reviewed on May 15, 1938, and the sentence was reduced from twenty to five years in prison.

On December 14, 1939, following a protest on the part of the Prosecutor of the USSR against the verdict of the Special College of the Supreme Court of the BSSR of December 2, 1937, the case was reviewed by the Judicial Chamber for Criminal Cases of the Supreme Court of the USSR. It was established that those convicted, namely Myshalov, Samulevich and Orlov, had "abused their official positions … but in fact there was no evidence that Myshalov had committed the aforementioned crimes for counter-revolutionary reasons. Therefore, his actions should come under Article 196-1 of the Criminal Code of BSSR." The behaviour of Samulevich, Orlov and Radziwinowicz was now explained by reference to the extremely difficult circumstances in which they had to work, and their sentences were deemed to have been extraordinarily excessive.

As a result, their sentences were reduced once more – Myshalov's to ten years, Samulevich's and Orlov's to five years each, and Radziwinowicz's to three years. Kirpichenko was released on June 25, 1939, ahead of schedule (in accordance with the pronouncement of the Judicial Board adjudicating on criminal cases of the Belarusian Supreme Court on June 14, 1939).[71] He had

67 NARB. F. 4-p. Op. 1. D. 14689. L. 6.
68 NARB. F. 4-p. Op. 1. D. 14689. L. 6.
69 NARB. F. 4-p. Op. 21. D. 1722. L. 3.
70 NARB. F. 4-p. Op. 1. D. 14689. L. 3.
71 NARB. F. 188. Op. 1. D. 3202 a. L. 296.

served twenty-two months of his three year sentence.[72] Bragin (incarcerated in Forced Labour Camp No. 105 for construction workers) was released, after serving his sentence, on October 25, 1940;[73] Myshalov was sentenced to a term in Sorokolag further in the Minsk stage of proceedings on August 8, but died on November 28, 1938, never having reached his destination.[74]

In his memorandum to the Central Committee of the CPSU of July 3, 1939, Ponomarenko confirmed what he said regarding the letters of Communists to the Central Committee (without specifying who they were or the subject of their correspondence) that "the former leadership of the Central Committee and its working practices raised serious concerns", and wrote that he personally had serious misgivings about the former Second Secretary, Levitsky, on the basis of whose orders and those of Berman, Volkov had acted. "Suffice it to say that all cases that were decided by the Central Committee were agreed in advance with the former leadership of the NKVD."[75]

The "Lepel case" in the broadest sense had once again served its purpose: Ponomarenko had something to indict his Central Committee and NKVD predecessors with. When the wave of purges began to lap at the doors of the NKVD, its employees were also accused of making unnecessary arrests of district leaders and "by using physical force against detainees, had extracted from them fictitious testimonies, and instigated explicitly provocative investigations."

IV.

It seems that it was a vicious circle: local authorities were accused of hostile activities which they carried out on the instructions and under the control of their superiors in Minsk.

In my opinion, researchers underestimate the following fact: by 1937, the peasantry was still a force to be reckoned with even if collectivization was all but completed. In addition, clandestine religious associations and "kulaks" (wealthy peasant farmers), who had returned from exile, constituted centres of incipient opposition or, at least, the authorities wielded this idea quite intensively during the repressions.

The "Lepel case" that began as a refusal to give the information required in the census of 1937 and which led to a nationwide suppression of local officials carrying out the will of the Party and a complete change of the top

72 NARB. F. 188. Op. 1. D. 3202 a. L. 298.
73 NARB. F. 188. Op. 1. D. 3202 a. L. 318.
74 NARB. F. 188. Op. 1. D. 3202 a. L. 303, 306.
75 NARB. F. 4-p. Op. 1. D. 14689. L. 8.

leadership in Belarus was remembered again some twenty years later. On that occasion, the "Lepel case" became the focus of attention due to Malenkov's role in organising mass repressions in Belarus.

Nicolay M. Shvernik stated in his memorandum addressed to Nikita S. Khrushchev concerning the part played by Malenkov in organising repressions in the Belarusian Soviet Socialist Republic dated May 12, 1958, that on the instructions of the Central Committee of the CPSU, the Committee of Party Control investigated the communications of leading officials of the Belarusian Central Committee on the anti-party activities of Malenkov. In addition it had investigated the facts relating to the destruction of Party and local council cadres in Belarus by Malenkov in 1937, when he was head of the ORPO (the Department of Governing Party Organs, of the Central Committee of the CPSU), and also in subsequent years. He also went on to report: "The fact that Malenkov exploited any negative phenomenon in the life of Belarus to deceive the Party, is clearly evidenced by the so-called 'Lepel case', regarding which, in February 1937, the Politburo of the Central Committee of the All-Union Communist Party (Bolsheviks) established that in the Lepel border area, infringements of the legal rights of collective farmers and individual farmers had come to light as a result of the excesses of the local authorities, and as a consequence of erroneous directives emanating from Narkomfin (the People's Commissariat of Finance), and the Requisitions Committee. These directives were repealed by Politburo decision; farmers were offered assistance, perpetrators were punished for their excesses. However, Malenkov, contrary to the decision of the Politburo, presented the 'Lepel case' as the result of hostile actions of Polish agents, and, on those grounds, carried out mass arrests in all border areas."[76]

Overall, from the moment of Malenkov's and Yakovlev's arrival in Minsk, right up to November 1938, the NKVD arrested almost 55,000 people in Belarus, of whom more than 27,000 were executed.[77]

76 *Reabilitatsiya: kak eto bylo*, 312.
77 *Reabilitatsiya: kak eto bylo*, 319.

Ingo Müller

Judicial and Extrajudicial Political Persecution under the National Socialist Dictatorship – Structures, Logic, and Developments

All states whose legal or constitutional foundations rest beyond the rule of law disregard human rights *(Unrechtsstaaten)*. They prevent freedom of speech in general and, all the more so, in the courtroom. No dictatorship can endure an independent judiciary that checks the state's use of force and, if necessary, blocks the state's use of force. Usually, political systems that are not founded on the rule of law deny and conceal this fact. However, in contrast to this, in the Third Reich, the abolition of rules based on constitutional law was undertaken openly and with religious zeal. Above all rights stood the National Socialist worldview, and what was regarded as a right was "what Aryan people considered a right, and what they rejected, was not a right" (Alfred Rosenberg).[1] Unlawful actions were, according to the legal doctrine of the day, "actions taken against the German National Socialist worldview".[2] National Socialist dogma of the identity between Führer and Volk based on blood *(blutmäßig)* and race *(artgemäß)* stated that the Führer spoke and acted in the name of the entire people, and this was infallible. Every criticism of those in charge therefore became treason, and every revealed abuse signified criticism of the Führer, and by extension, the people. According to this doctrine, independent jurisprudence was unthinkable because that would have separated the judge from the people qua one homogeneous body. Courts did not acquire their legitimacy by independent appointment and obliga-

1 Alfred Rosenberg, 'Lebensrecht, nicht Formalrecht', *Deutsches Recht: Zentralorgan des Bundes Nationalsozialistischer Deutscher Juristen*, 4/10 (1934), 233-4, 233.

2 Edmund Mezger, 'Die materielle Rechtswidrigkeit im kommenden Strafrecht', *Zeitschrift für die gesamte Strafrechtswissenschaft*, 55 (1936), 1-17, 9.

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tion to uphold the law, but took their legitimacy by will of the Führer. According to a memorandum written by the party-run Academy for German Law, "overall management (of the justice system) rests in the hands of the Führer, while the judges, who are merely *Unterführer*, are granted a derived legitimacy from the Führer in individual cases of law."[3] Lawyers known to have been committed to democracy, to republican and liberal views, as well all those who were of "non-Aryan stock", were banned from the judiciary, universities, the civil service, and the Bar; the Law for the Restoration of the Professional Civil Service of April 7, 1933 *(Gesetz zur Wiederherstellung des Berufsbeamtentums)*[4] and the Law on Admission to the Profession of Attorney *(Gesetz über die Zulassung zur Rechtsanwaltschaft)*,[5] imposed an eerie uniformity on lawyers especially in regard to penal and criminal proceedings issues. The result of this "new criminal law" – 80,000 death sentences handed down by criminal courts, special courts, courts martial, the People's Court *(Volksgerichtshof)*, the Reich Military Court *(Reichskriegsgericht)*, and lastly, the drumhead courts martial *(fliegende Standgerichte)* – can all be attributed to the law schools, legislation, and jurisprudence, because all three acted in concert, and each did their bit in the commonplace miscarriage of justice in the criminal courts of the Third Reich.

Academic Law

Much of the responsibility for the decline of law in the Third Reich can be attributed to academic criminal law, though this was not necessarily tied to the education of young lawyers "in the new spirit". The graduating classes from 1933 to 1939, their training hardly finished, were needed as officers at the front, and only began to really practice their legal calling in the postwar period. Nazi jurisprudence functioned above all as propaganda. Since the liberal rule of law – state power constrained by a constitution, equality before the law, independent administration of justice, and inviolable areas of personal liberty – had already been largely liquidated during the "National Socialist Revolution", the law, especially academic criminal law, saw its purpose in extinguishing the remnants of liberal-constitutional ideas from German jurisprudence.

3 Roland Freisler, *Denkschrift des Zentralausschusses der Strafrechtsabteilung der Akademie für Deutsches Recht über die Grundzüge eines Allgemeinen Deutschen Strafrechts* (Berlin, 1934), 17.

4 Reichsgesetzblatt (further RGBl.) 1933 I, 175.

5 RGBl. 1933 I, 188.

Since those in power could not simply change every law even if they did actively participate in creating laws, it was important that the judiciary would develop a new attitude to the law, and to make it plain to those who remained in office after the purge of the judiciary, that judicial independence would "need to be placed within certain limitations in the interest of unified governance", and that it was now important "to be clear, the rule of an exclusive bond *(alleinige Bindung)* between the judge and the law, beginning today, will be stated somewhat differently than before",[6] because "we are looking for a bond that is more reliable, more alive, and deeper than the deceitful bonds of malleable letters in thousands of paragraphs."[7]

The ideal of the level-headed and impartially detached judge was suspect in the eyes of this legal school of thought, its "abstract normative thought" appearing to be an "expression of helplessness, deracination and effeminacy" (Wolfgang Siebert).[8] The new judge was to make his decisions "not by an analytical inspection of the various elements, but by holistically and concretely capturing the essence intuitively *(Wesensschau)*." Legal acumen and an impartial consideration of cases were rejected as mere "rational analyses" of the facts (Georg Dahm),[9] and replaced with an "emotionally value-aware *(emotional-wertfühlende)*, holistic approach" (Hans Welzel).[10] Simply put: a judge was to approach a case "with a healthy bias" and "render value judgements … in order to conform with the political leadership,"[11] because "in the day-to-day life of the legal world, real National Socialism will likely find itself in those instances where the ideas of the Führer are agreed to tacitly, but loyally observed."[12]

6 Erik Wolf, 'Das Rechtsideal des nationalsozialistischen Staates', *Archiv für Rechts- und Sozialphilosophie*, 28/3 (1934/35), 348-63, 349.

7 Carl Schmitt, *Staat, Bewegung, Volk: Die Dreigliederung der Politischen Einheit* (Hamburg, 1933), 46.

8 Wolfgang Siebert, 'Vom Wesen des Rechtsmissbrauchs: Über die konkrete Gestalt der Rechte', in Georg Dahm, Ernst Rudolf Huber, Karl Larenz, Karl Michaelis, Friedrich Schaffstein, and Wolfgang Siebert (eds), *Grundfragen der neuen Rechtswissenschaft* (Berlin, 1935), 189-224, 209.

9 Georg Dahm, 'Der Methodenstreit in der heutigen Strafrechtswissenschaft', *Zeitschrift für die gesamte Strafrechtswissenschaft*, 57 (1938), 225-94.

10 Hans Welzel, *Naturalismus und Wertphilosophie im Strafrecht: Untersuchungen über die ideologischen Grundlagen der Strafrechtswissenschaft* (Mannheim-Berlin-Leipzig, 1935), 73.

11 Georg Dahm, 'Das Ermessen des Richters im nationalsozialistischen Strafrecht', in Roland Freisler (ed), *Deutsches Strafrecht: Strafrecht, Strafrechtspolitik, Strafprozeß, Zeitschrift der Akademie für Deutsches Recht*, Neue Folge, vol. 1 (Berlin, 1934), 87-96, 90.

12 Wolf, *Das Rechtsideal des nationalsozialistischen Staates*, 348.

The tremendous effort infused into this ideological verbiage was meant to reduce the deficit in legitimacy that came about as a result of the abandonment of all of the legal standards of western civilization: freedom, human dignity, equality before the law as well as the equivalent guarantees and court procedures that were, as it was said, "contrary and repulsive to our own German way of looking at the world."[13] Since the age of Enlightenment, academic law had taken upon itself the task of delineating the boundaries between punishable and non-punishable acts. The law professors of the Third Reich strove, in contrast, to "abolish recognition of the law and to set aside the predictability of the law's effects and consequences."[14]

The polemic of National Socialist academic law aligned itself primarily against the state-constitutional foundations of criminal law, above all, against the principle of "no penalty without law" *(nulla poena sine lege)* and all of its implications: the prohibition of ex post facto laws *(Rückwirkungsverbot)*, the prohibition of analogy, the certainty of law as well as an impartial legal system's monopoly of punishment; to place a system of sanctions next to a system of criminal law undermines every basic right to justice. All of these components were soon destroyed in the Third Reich. The prohibition of ex post facto law was nullified first with the law that covered death by hanging and implementation of the death penalty ("Lex van der Lubbe"),[15] and more than twenty laws and edicts from the Nazi era retroactively implemented a punitive sentence.[16] In regard to "protective custody" (*Schutzhaft*), which the police alone could decide, a penal option was created that existed alongside criminal law. The prohibition of analogy, which had already been hollowed out by the "creative interpretations" propagated by academic law, was formally abrogated in June 1935. Thereafter, according to section two of the criminal code, it was declared that "those who have committed an act declared punishable by the law, or who have earned punishment according to the principles of the law and popular sentiment" are subject to punishment.[17]

13 Eberhart Finke, *Liberalismus im Strafverfahrensrecht* (Bonn, 1936), 18.

14 Heinrich Henkel, *Strafrichter und Gesetz im neuen Staat: Die geistigen Grundlagen* (Hamburg, 1934), 37.

15 From March 29, 1933, RGBl. 1933 I, 151.

16 Wolfgang Naucke, 'Die Aufhebung des strafrechtlichen Analogieverbots 1935', in Institut für Zeitgeschichte (ed), *NS-Recht in historischer Perspektive* (München, 1981), 71-108.

17 From June 28, 1935, RGBl. 1935 I, 839.

Legislation

Just as the assiduous effort to gain legitimacy for a system of injustice could hardly be called academic law, the same could be said of the laws that pertained to criminal justice. In the formal sense they were not even laws, but rather mere administrative decrees. They were also not really laws in substance, given that they often intentionally left the definition of what was punishable and non-punishable vague. In essence, they were "anti-normative norms" that only provided judges with approximate guidelines while also lending a degree of legitimacy to their decisions, even after the decisions long since ceased to agree with the wording of the "law". The act of legislating passed over to the government by the "Law to Remove the Distress of the People and the State", the so-called Enabling Act *(Ermächtigungsgesetz)* of March 24, 1933.[18] The emergency decree for the protection of the people and state, the so-called Reichstag Fire Decree *(Reichstagsbrandverordnung)*, issued on February 28, 1933,[19] not only suspended basic rights, but also included several criminal provisions. For these, a special court jurisdiction was created on March 21, which would only grow in importance in the years that followed. The twenty-six special courts *(Sondergerichte)* – one for every superior regional court district (*OLG-Bezirk*) – were usually manned by three career judges who were usually deputized by the regional courts. The procedures at these special courts corresponded largely with conservative desires for reform, especially in regard to reducing the rights of the accused and strengthening the state prosecutor. An order opening a criminal trial or pre-trial investigations were unheard of. Judges had to issue arrest warrants requested by the state prosecutor without examining the requests, the defence could not submit a motion to hear evidence, the range of acceptable evidence was set at the court's own discretion. The accused had no legal means to appeal court decisions which took immediate effect. The short trials that were made possible by these reforms fulfilled the express desire to "eliminate formalism" in criminal proceedings. By the beginning of the war, the special courts – their number having multiplied in the meantime – had become the standard authority on criminal proceedings. All of the penal provisions written after 1938 stipulated their jurisdiction. In the words of a department head in the ministry of justice, Wilhelm Crone, the "special court was the fastest and toughest tool for quickly obliterating criminal elements *(Gangsternaturen)* – temporarily or for good – from within the national community."[20]

18 RGBl. 1933 I, 141.

19 Ibid., 63.

20 Quoted in Werner Johe, *Die gleichgeschaltete Justiz: Organisation des Rechtswesens und Politisierung der Rechtssprechung 1933-1945* (Hamburg, 1967), 91.

The special courts were of even greater importance in occupied regions, especially in the east. With the provision for criminal justice against Poles and Jews in the territories incorporated into the Reich, passed on December 4, 1941,[21] the special courts received their very own legal foundation. The standard punishment was the death penalty, and it was to be imposed against Jews and Poles for basically every regulation that was violated. Only in the "case of minor offences" was the fitting punishment deemed to be a term in a "penal camp," that is, a concentration camp. Individual criminal offences were composed as sweeping clauses whereby Poles and Jews could also be punished when their actions "deserved punishment due to state necessities in the territories incorporated into the Reich." Criminal proceedings were shaped "in accordance with the dutiful discretion" of the judge and state prosecutor, who could deviate from all rules of procedure "in instances where this led to a swift and firm conclusion of the case."

The Courts

In the face of such vague laws, the courts may as well have ceased to exist, unless they used their new-found freedom at the expense of the accused. To get a better idea of how the criminal justice system – and not just the special courts – operated at the time, the case of the Polish youth Walerjan Wróbel, documented by Christoph U. Schminck-Gustavus, serves as a good example.[22]

After his family's farm had been razed to the ground and his parents and siblings went missing, the fifteen-year-old Walerjan Wróbel was picked up by the German police and reported, supposedly of his own free will, for a labour assignment in Germany. Set to work as a farm labourer in Bremen-Lesum, he suffered from hard work, ill-treatment, and isolation – initially, he did not know a single word of German – but above all, he suffered from homesickness. So he set out by foot on the nine-hundred-kilometre journey back home, but was soon picked up, cautioned, and returned to his place of work. There, the idea occurred to him to set fire to a barn, for which he would certainly be punished, and returned to Poland to serve his "sentence". Even for a fifteen-year-old, he was still very childish. The fire was quickly discovered before it could cause any damage. Walerjan also helped to put the fire out. Naturally, he was not returned to Poland, but rather, as stated in his

21 RGBl. 1941 I, 759, all quotes following in this paragraph.

22 Christoph U. Schminck-Gustavus, *Das Heimweh des Walerjan Wróbel: Ein Sondergerichtsverfahren 1941/42* (Berlin, 1986).

indictment, he was charged by the special court in Bremen under the decree aimed at enemies of the people *(Volksschädlingsverordnung)* together with the criminal justice provisions against Poles.

The sentence[23] shows how the judges juggled the different statutory provisions of the law, only to let them all fall to the wayside in the end: first of all, the purpose and inner logic of the two laws (that were ultimately used to sentence Wróbel) prevented them from being used in combination. The "enemies of the people" decree related to Germans who betrayed their own kind, not to "foreign races *(Fremdvölkische)*. In accordance with this decree, a "serious act of arson" was defined as setting on fire a house inhabited by people, and it carried the death sentence, but only if it "harmed the resilience *(Widerstandskraft)* of the German people." Wróbel was not a German citizen, but a Pole, and he attempted to burn down a barn, not a house, so he was only guilty of simple arson. However, because Wróbel assumed that he would be deported, the judge concluded that Wróbel had assumed the house would burn down as well. Had Wróbel actually wanted to burn the house down, he would have been guilty of attempting a serious act of arson, and since the barn was so far away from the house that it was unlikely to catch fire, his act of arson would have been further defined as an ineffectual attempt. However, in his sentence, it was simply stated that Wróbel had "deliberately attempted to burn down a building that served as a place where people lived." This is not what he had done, and the simple arson that he had carried out could not have undermined the German people's resilience. However, according to the judgment rendered on July 8, 1942, the resilience of the German people "was harmed even when it was in danger of being harmed." Though the anti-Polish criminal justice provision was not yet in effect at the time of the crime, and it was not endowed with retroactive force, according to the judge, the sentence did not stand in conflict with the law in this case. Finally, the law concerning charges brought against minors *(Jugendgerichtsgesetz)* forbade imposing the death sentence against youths (Wróbel had just turned sixteen at the time of the trial), but here too, the judge did not see Wróbel's age as a hindrance: "The defendant might in fact be a minor according to the law … but since he is Polish, this law is not in effect. The law concerning charges brought against minors was created with Germans in mind, with the intention of reforming them through education so as to transform them into decent members of society." This conclusion was new and had no basis in the law concerning charges brought against minors. Walerjan Wróbel was guillotined in Hamburg on August 25, 1942.

23 Schminck-Gustavus, *Walerjan Wróbel*, 73-5, all quotes following in this paragraph.

Any suggestion that this decision was based on five distortions of the law which were necessary for the judge to arrive at the death penalty would lie within the confines of legal standards dismissed by jurists at that time as "normative" or "Jewish-liberal." The laws that were cited were not written for the purpose of being interpreted restrictively and protecting those who had not been deliberately included under the law. Rather, the thrust of those laws was to kill people like Wróbel for the sake of deterrence, and in this case, laws were cited merely as a formality, to dress the procedure in a cloak of legitimacy.

The Judicial System and the Police

Following the Reichstag Fire Decree,[24] issued four weeks after Hitler became chancellor, which curtailed all of basic constitutional rights, lawyers quickly closed ranks behind the idea that questions of individual liberty were a matter to be decided by the police, "and that it should be decided in the form of protective custody, a procedure that is not tied to any legal premises or any time constraints and which does not have to be reviewed by a judge."[25] The police also reserved the right to incarcerate people in concentration camps who had been convicted in court and who had served their sentences, and to arrest people in courtrooms, upon their release by judges. Even in the Reichstag fire trial, which received significant attention from international observers, the four defendants who were acquitted were immediately led off to a concentration camp. As a result of these practices, judges saw their authority undermined, and the Ministry of Justice protested frequently, but not so much on grounds of principle, but rather on grounds of how these practices were carried out. The judiciary recognized the primacy of the police without demur. Already in May 1933, the Minister of Justice ordered that all prisoners arrested for political crimes were to be reported to the Gestapo four weeks before their release[26] so that the Gestapo could incarcerate them in a concentration camp. Subsequently, this requirement to report to the Gestapo was extended to include Jehovah's Witnesses who were to be re-

24 Verordnung des Reichspräsidenten zum Schutz von Volk und Staat from February 28, 1933, RGBl. 1933 I, 83.

25 Eduard Kern, 'Die Grenzen der richterlichen Unabhängigkeit', *Archiv für Rechts- und Sozialphilosophie*, 27/3 (April 1934), 309-18, 309.

26 Quoted in Dietmut Majer, *Fremdvölkische im Dritten Reich: Ein Beitrag zur nationalsozialistischen Rechtssetzung und Rechtspraxis in Verwaltung und Justiz unter besonderer Berücksichtigung der eingegliederten Ostgebiete und des Generalgouvernements* (Boppard am Rhein, 1981), 649.

leased, as well as those who had been sentenced under the Blood Protection Law *(Blutschutzgesetz)* and so-called "asocials".[27] At the outbreak of war, and no later than when Otto Thierack, president of the People's Court, became Minister of Justice, the judiciary also formally recognized the right of the police and the SS to "correct" sentences that they considered to be too mild "by recourse to special police treatment."[28] Application of the criminal justice provision against Poles in the judicial procedures of the special courts in occupied Poland soon revealed that the difference between a judiciary bound to justice and law when compared to the Nazi terror unleashed by the Gestapo and the Sicherheitsdienst (SD) of the SS was fast disappearing. There certainly was no rivalry, especially since both had the same agenda. At a meeting held on September 18, 1942 between the Ministry of Justice Thierack and the "Reichsführer-SS and head of the German police," Heinrich Himmler, the former surrendered all authority to the Reichsführer-SS on questions concerning criminal justice for Poles, Soviet Russians, Jews and Gypsies.[29] Thierack justified this move in a letter to Martin Bormann: "I take it as given that the judiciary can only contribute to a limited extent to wiping out members of these peoples. The judiciary has shown little reservation about meting out very tough sentences against such people, but this is not enough."[30]

Not long thereafter, with the Thirteenth decree of the Reich Citizenship Law, what was already long in practice was written into law: "Criminal offences committed by Jews will be handled by the police. Criminal justice provisions against Poles are no longer applicable to Jews as from December 12, 1941."[31]

Had the Third Reich lasted much longer, similarly-worded provisions would have been enacted for Poles, Russians, and other so-called "foreign races." The "law concerning the treatment of strangers to the community *(Gemeinschaftsfremder)*" that was written by the Interior Ministry was an all-encompassing law that dealt with asocials, those who were regarded as refusing to work *(Arbeitsverweigerer)*, petty criminals, and those who opposed the system, which granted power to hand out punishments not only to the judiciary but also to the police, and was near enactment.[32] However, it would

27 Majer, *Fremdvölkische*, 649.

28 Also see Ilse Staff, *Justiz im Dritten Reich*, second edition (Frankfurt am Main, 1978), 106-7, for a copy of the protocol of the meeting on September 18, 1942.

29 Bundesarchiv (BArch) R 3001/24064 Bl. 35a-37.

30 Archiv des Instituts für Zeitgeschichte, IfZ MA 1563/7 (NG 558).

31 Decree from July 1, 1943, RGBl. 1943 I, 372.

32 A draft of this law can be found in Sarah Schädler, *"Justizkrise"und "Justizreform" im Nationalsozialismus: Das Reichsjustizministerium unter Reichsjustizminister Thierack (1942-1945)* (Tübingen, 2009), 343-5.

not have made much of a difference, given that criminal justice or anything resembling criminal justice hardly existed anymore. During the twelve years that the Nazis were in power, criminal justice was replaced step by step with a ritual that included charges, a judge's bench, legal language, and the citing of case law, but in reality, only bore a slight resemblance to actual legal proceedings. This was meant to give the impression that everything was done legally; thus the outside world was fobbed off with a semblance of legitimacy, while those working the system could do so with a clear conscience.

"The murderer's knife was hidden under the robe of the judge."[33] This short phrase, delivered in 1947 against leading lawyers and judges of the Third Reich, was used by an American military court in Nuremberg in summing up the criminal justice system of the Third Reich.

Nonetheless, not a single judge from the People's Court, the regular courts *(ordentliche Gerichte)*, the special courts, war courts, or, not least, the drumhead courts martial that terrorized a war-weary population in the spring of 1945 was held accountable by the Federal Republic of Germany. And nearly fifty years had passed when, on November 16, 1995, the highest authority in criminal cases, the Federal Court of Justice of Germany *(Bundesgerichtshof)*, spoke of a "perversion of the legal order that was more difficult to imagine."[34] It also did not hesitate to identify as "blood judges" *(Blutrichter)* the criminal judges of the Third Reich, those who had presided over the regular courts, military justice, and the special courts. Why it took half a century to produce this verdict is another story.

33 Quoted in Zentraljustizamt für die Britische Zone (ed), *Das Nürnberger Juristenurteil* (Hamburg, 1948), 43.

34 *Neue Juristische Wochenschrift* (NJW) 1996, 857, with remarks by Otto Gritschneder, NJW 1996, 1239.

Ingo Loose

Special Courts in the Annexed Polish Regions (1939-1945): Occupation Period Instruments of Terror and Social History Source

Introduction and Aims

The German Reich and the Soviet Union unleashed their attacks on the Second Polish Republic on the 1st and 17th of September 1939, following which Poland was split into three: the eastern part was incorporated into the Soviet Union in accordance with the secret protocol of the so-called Ribbentrop-Molotov Pact, a central Polish region called the General Government (GG) – which initially included the subtitle "for the Occupied Polish Regions" – was retained but with a deliberately unclear status, being in reality a colony under German suzerainty, and finally, the western regions, which were added to the German Reich and earmarked from the outset for complete "Germanization". "Germanization" was to be achieved primarily by expelling Jews and Poles, and replacing them with ethnic German settlers from East-Central and Eastern Europe. Officially, within a short period of time, the laws of the German Reich were introduced into these "annexed eastern regions", that is, the new Reichsgaue Wartheland and Danzig-West Prussia as well as the administrative regions of Zichenau and Kattowitz (East Upper Silesia).[1] Nonetheless, there were significant and revealing exceptions as to

1 Czesław Łuczak, *Pod niemieckim jarzmem (Kraj Warty 1939-1945)* (Poznań, 1996); Czesław Łuczak, *Polityka ludnościowa i ekonomiczna hitlerowskich Niemiec w okupowanej Polsce* (Poznań, 1979); Ryszard Kaczmarek, *Pod rządami gauleiterów: Elity i instancje władzy w rejencji katowickiej w latach 1939-1945* (Katowice, 1998); Mirosław Węcki, *Fritz Bracht (1899-1945): Nazistowski zarządca Górnego Śląska w latach II wojny światowej* (Katowice, 2014).

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how the law was implemented, and criminal law was without question one of the most important exceptions.[2] The reasons for this were obvious to the German occupiers, given that the regions in question were classified, for propaganda purposes, as ancient German lands which were supposed to be "re-Germanized" as much as possible during the war. This proved to be a very tall order given that in reality, barely ten percent of the local population was German, about the same proportion was Jewish, while Poles made up the vast majority – with all three groups having been Polish citizens before the invasion. Therefore, to the extent that conditions on the ground in the annexed regions differed from those in the Reich (and from the claims made by propaganda), the administration of justice became an important tool of National Socialist occupation policies from the outset. But it must be added that the term "occupation policies" only partly reflects what amounted to years of terror for Poles and Jews, where mass murder legitimized under pseudo-legal auspices was the order of the day. More so than any other judicial authorities, the numerous German special courts[3] stand out in particular, and, therefore, their function and judicial practices should be more closely examined. What were the tasks allocated within the framework of the occupation policies? To what degree did the consequent legal decisions affect the general situation and the ability of the people who lived in these regions to coexist? These are just some of the questions requiring elucidation.

Injustice, Case Law, and the Jurisdiction of Special Courts in the Annexed Polish Regions after 1933

The objectives of the German occupation policies in the annexed Polish regions were as extensive as they were contradictory – and during the war at least, there was no way that they could be achieved. Indeed, in spite of the violence with which the Germans pursued their goals, which included the integration of potential industrial and agrarian output into the German wartime economy, the integration of hundreds of thousands of ethnic German settlers from Eastern Europe, the plundering of Polish private property and of the gross national wealth of the Polish state, the exploitation of Polish labour, and, not least, the persecution of the Jews, the final results were am-

2 See Hinrich Rüping (ed), *Bibliographie zum Strafrecht im Nationalsozialismus: Literatur zum Straf-, Strafverfahrens- und Strafvollzugsrecht mit ihren Grundlagen und einem Anhang: Verzeichnis der veröffentlichten Entscheidungen der Sondergerichte* (München, 1985).

3 See Ingo Müller, *Furchtbare Juristen: Die unbewältigte Vergangenheit unserer Justiz* (München, 1987), especially pages 164-75 (chapter on the special courts in the East).

biguous. This was a mounting dilemma in face of which the Nazi leadership, in this case the Reich governors *(Reichsstatthalter)*, did not react by relaxing their methods, but rather by increasingly radicalizing them. At the point of contact of these conflicting objectives, it rapidly became obvious after September 1939 that the already precariously poised German legal system, which had long-since fallen in line with the National Socialist regime, could, in the interests of the regime, deform itself even further in accommodating itself to the needs of the occupation of Poland. When Ernst Fraenkel took the political situation of the 1930s into account and developed his famous model of a "dual state", he distinguished between an action-oriented "prerogative state" *(Maßnahmenstaat)* and a "normative state" *(Normenstaat)* that generally maintained the image of a state that upheld law and order.[4] However, these analytical distinctions break down when considering the occupied Polish regions and the violence that was unleashed there.

It was in any case a startling and irresolvable contradiction when, in the fall of 1939, the establishment of a so-called justice system came in parallel with the murder of tens of thousands of Poles and Jews at the hands of *Einsatzgruppen* of the Security Police and the SD – and later continued through the so-called AB-Aktion (*Außerordentliche Befriedungsaktion* – "Extraordinary Operation of Pacification") in the early summer of 1940 in the General Government. On the one hand, this legal development followed a trajectory that had become immediately evident after the Nazi seizure of power in 1933 and was certainly noticed in Poland,[5] namely, that injustice and then later crimes were legitimized under the cover of pseudo-justice, while legally established restrictions and conditions, especially those that came in the form of international agreements, were immediately discarded.[6] On the other hand, what Maximilian Becker aptly describes as "annexation justice,"[7] was, from the beginning, set the task of securing and sustaining a (supposedly) clear separation of ethnic groups along national-racist lines

4 Ernst Fraenkel, *Der Doppelstaat: Recht und Justiz im "Dritten Reich"* (Frankfurt am Main, 1984).

5 Leonard Górnicki, *Prawo Trzeciej Rzeszy w nauce i publicystyce prawniczej Polski Międzywojennej (1933-1939)* (Bielsko-Biała, 1993), 110-43 (in regard to criminal law).

6 By extension, this affected the General Government as well, given its intentionally unclearly defined status as a "neighbouring land of the Reich", in which General Governor Hans Franck had unlimited authority and could promulgate laws going beyond the bounds of the Hague Convention. The law establishing the special courts in the General Government in mid-November 1939 (VOBlGG 1939, 34) could probably be traced back directly to Franck. Also see Instytut Pamięci Narodowej (IPN), GK 196/385, fols. 152, 164: Josef Bühler, *Die Gesetzgebung im Generalgouvernement*.

7 Maximilian Becker, *Mitstreiter im Volkstumskampf: Deutsche Justiz in den eingegliederten Ostgebieten 1939-1945* (München, 2014).

and – just as importantly – maintaining a relationship of superiority between the Germans and the rest of the population. As it became clearer to the German authorities on the ground that they would have to continue reckoning with a majority-Polish population during the war and possibly for a much longer time thereafter, the number of radical voices diminished. For example, the district president of Posen, August Jäger, declared in October 1940 that a rudimentary guarantee of rights was needed for the non-German populations in order to "keep the Pole from turning into the private object of exploitation" of the Germans.[8] The "guarantee of rights" was supposed to hinder private exploitation (which it did not do), and yet the exploitation of the Polish people by the state was the occupier's declared strategy.

With regard to aligning laws in the Polish regions incorporated into the Reich, following shortly after the invasion of Poland, the Reich Ministry of the Interior pointed out to senior Reich officials that it "wanted to undertake a test in the direction of whether the appropriate preferential position of the ethnic Germans was indeed being given, and if necessary, to alter the Reich's legal provisions that are to be introduced, in order to keep foreign nationals *(fremdvölkische Volkszugehörige)* from becoming beneficiaries of German law."[9] Hereby, in the very beginning of the occupation, a legal principle, that is, the universal applicability of the law, was already being systematically and completely undermined, because all that really mattered was that the justice system in occupied Poland served as a guarantor of German hegemony.

There was, however, no intention of maintaining only legal inequality. The number of provisions with nationalist-socialist political objectives that went into effect in the Warthegau in the years that followed were legion, their purpose being to harass and plunder the Polish and Jewish populations and to deprive them of their rights. The legal system was emptied of meaningful content to such an extent and stage-managed *ad absurdum,* that it begs the question as to why anyone believed that the support provided by a system of laws was needed anymore at all. Ultimately, the amount of power-political arbitrariness that unfolded in the occupied regions throughout the entire occupation was so great that it is no wonder that the balance of law and sheer terror was officially pushed in favour of terror in 1942.

With these activities serving as a backdrop, in the fall of 1939, the special courts (*Sondergerichte,* SG) were introduced in the annexed Polish regions by

8 *Ostdeutscher Beobachter* (October 26, 1940); quoted in Holger Schlüter, *"… für die Menschlichkeit im Strafmaß bekannt …": Das Sondergericht Litzmannstadt und sein Vorsitzender Richter* (Recklinghausen, 2005), 64.

9 Bundesarchiv (further BArch), R 2/5112, fol. 72: RMdI, signed by Hans Pfundtner, addressed to the senior Reich administrators, dated November 16, 1939, with reference to implementing the law in the new eastern regions.

the military authorities; their responsibilities were "extensive, as compared to those in the Reich, and covered all criminal acts committed by the civilian population."[10] The most prominent features of the special courts were their swift trials and the significant reduction of defendants' rights, as reflected in the penalties and their severity, which is why the special courts can to some extent be understood as an extension of the permanent state of war in the struggle for ethnic dominance *(Volkstumskampf)*.[11]

Nonetheless, the responsibility of the special courts was not limited to "non-German foreign nationals" *(fremdvölkische)*, that is, Poles and Jews, but also included German criminals. This fact could not be revealed by the occupier-controlled press, which otherwise reported extensively on the judgments rendered by the special courts. Naturally, the German authorities wished to avoid undermining the "authority of German-ness *(Deutschtum)* among the Poles."[12] In the spring of 1942, the press office of the public prosecutor in Posen even put together an information leaflet for government agencies with guidelines for reporting on Germans guilty of delinquent behaviour in the occupied regions. The balance was thoroughly devastating: "the optimistic expectations", according to the Wartheland Gau press office in February 1942, "that the significantly larger Polish population and the natural propensity of Poles towards criminal activity would mean that the number of Germans found guilty of economic crimes in particular would be extremely low, has not proved true."[13] Just the opposite was true, with the number of criminal offenders stemming from the growing German segment of the population being distinctly disproportionate to their actual numbers.

Overall, it was therefore not surprising that economic crimes constituted by far the largest category of offences dealt with by the special courts, and the volume of economic crimes dealt with by the special courts continually increased after 1942. While, generally speaking, the motive of self-enrichment prevailed among German defendants in the eastern regions, Poles and Jews, facing food shortages of famine proportions and other serious deficits of consumer goods, were often systematically forced by bitter necessi-

10 Becker, *Mitstreiter im Volkstumskampf*, 48; also see Wiktor Lemiesz, *Paragraf i zbrodnia* (Warsaw, 1963). For the special courts in the German Reich, see Werner Johe, *Die gleichgeschaltete Justiz: Organisation des Rechtswesens und Politisierung der Rechtsprechung 1933-1945, dargestellt am Beispiel des Oberlandesgerichtsbezirks Hamburg* (Frankfurt am Main, 1967), 81-116.

11 The General Government and the special courts established there followed a very similar development. See Andrzej Wrzyszcz, *Okupacyjne sądownictwo niemieckie w Generalnym Gubernatorstwie 1939-1945: Organizacja i funkcjonowanie* (Lublin, 2008), especially 43-59, 130ff.

12 Archiwum Państwowe w Poznaniu (APP), 299/468, fol. 4.

13 Ibid., fol. 1.

ty to more or less work around fixed prices, hoard harvested products, or turn to the black market. There was a considerable gap between economic crimes and other offences, such as battery, assault, abortions (until it was no longer considered a crime for Polish women in light of "national-political" [*volkstumspolitische*] considerations), wearing the wrong badge (especially for those on the German racial lists [*Volksliste*] or similar), forgery in general (ration cards most commonly), and fraud. Finally, there were also numerous cases that appeared before the special courts concerning Germans and Poles who were charged with having illicit contact with one another – including intimate or simply friendly relations – whereby the penalties for German and Polish defendants varied substantially, with Poles receiving disproportionately more draconian punishments. One of the smallest groups of defendants were those Poles or Germans who assisted the persecuted Jewish population.

The special courts passed down judgments in "national-political" cases as well as capital cases, which is why the trials held by the special courts did not qualify as show trials. Officially, the judges were impartial, even though the National Socialists occasionally tested their political reliability; the long lead-up to the 1933 "political alignment" *(Gleichschaltung)* of the judiciary did the rest. Trials were not open to the public; information on court decisions was only made public through official press releases – which to varying degrees served propaganda purposes. Only in exceptional cases did "flying" special courts visit the provinces or smaller cities to signal the presence of the German justice system; supposedly, they were to have a deterrent effect on criminals through fear in the rural areas.

The countless ordinances and regulations that were issued in the first months of the occupation, which differed in wording but not in their repressive character, reached their climax in December 1941 in the creation of a separate criminal law for Poles and Jews. The death penalty, or life imprisonment, was set as the punishment for a number of criminal offenses. Defendants no longer had the right of appeal, sentences were carried out immediately, and for Poles in particular, legal counsel was denied; in all but a comparatively few cases, this was a serious problem for most Polish-speaking defendants, given that proceedings were held exclusively in German. When an attorney was provided, his defence was usually a farce, at best pleading for leniency or a just trial, in some cases going so far as to agree with the state prosecutor's request for the death penalty.[14] These considerations made themselves evident in the judgments that were delivered: nearly seventy-five

14 Gerd Weckbecker, *Zwischen Freispruch und Todesstrafe: Die Rechtsprechung der nationalsozialistischen Sondergerichte Frankfurt/Main und Bromberg* (Baden-Baden, 1998).

percent of all the defendants brought before the special court in Litzmannstadt (Łódź) were categorized as Poles, but over ninety percent of the death sentences fell on this group.[15]

Germans, meanwhile, practically always had a lawyer by their side – and this alone accounted for different legal outcomes.[16] The state secretary in the Reich Ministry of Justice, Roland Freisler, introduced the so-called Criminal Ordinance for Poles on December 18, 1941 in Posen before an audience of judges and state prosecutors from Warthegau and the districts of Danzig-West Prussia, East Prussia, and Upper Silesia, stating that the position of Poles and Jews in the Greater German Reich was "unique" *(einmalig und einzig)*, a fact "for which Poles as well as Jews had only themselves to blame due to their acts."[17] In reference to this special criminal ordinance, which was not only in force in the annexed regions and the General Government, but was also valid for Polish forced labourers in the Reich,[18] Freisler delivered a talk at the end of October 1941 before a gathering of state attorney generals in which he remarked: "We now have the task of maintaining whatever general degree of order is humanly possible among the Poles as well. Furthermore, we must bring Polish criminal law and the maintenance of that law into line with the needs of the Reich, that is, steadfastly ensuring that the peace and order of the Reich is not disturbed, that its honour and reputation remains above reproach. And we must also finally ensure that insufficient punishments for crimes committed by Poles do not have a contagious effect on Germans.[19]

Parallel to the creation of a standardized German racial list *(Volksliste)*, a legal racial classification system that covered over ninety percent of the population of occupied Poland was pushed ahead at the end of 1940 and the beginning of 1941. In a letter written on April 17, 1941 to the head of the Reich Chancellery, Hans Heinrich Lammers, accompanying a first draft of the decree, State Secretary Franz Schlegelberger of the Reich Ministry of Justice stated that it was his intention to place the special courts, "with their particularly fast and effective trials, at the centre of the struggle against all Polish and Jewish crime." According to Schlegelberger, the success of this scheme was substantiated by "the very impressive official figures produced

15 Schlüter, *Sondergericht Litzmannstadt*, 61-2.

16 Ibid., 75.

17 'Neues Strafrecht für Polen und Juden. Verkündung durch Staatssekretär Dr. Freisler von Posen aus', *Ostdeutscher Beobachter*, (December 20, 1941), 1.

18 The most famous is the case of Walerian Wróbel, a seventeen-year old boy, who was sentenced in July 1942 by the special court in Bremen. See Christoph Schminck-Gustavus, *Das Heimweh des Walerjan Wróbel: Ein Sondergerichtsverfahren 1941/42* (Bonn, 1986); Müller, *Furchtbare Juristen*, 171-3.

19 Landeshauptarchiv Schwerin (LHAS), 5.12-6/4, no. 633, fols. 48-52.

by the special courts during their first ten months of service in the eastern regions. For example, of the defendants brought before the special court in Bromberg, 201 were sentenced to death, 11 to life imprisonment, and 93 were sentenced to a total of 912 years, that is, an average sentence of ten years."[20] The Criminal Ordinance for Poles went into effect on December 4, 1941 and signified the complete loss of rights for Poles and Jews in the annexed territories, and the legal precedents set by the special courts in the years that followed amply testified to this fact.[21]

Nonetheless, the current state of research does not conclusively show in what way the procedures of the special courts differed. It depended on the manner in which "Germanization", or the general occupation policies were to progress. They progressed at different rates in the various Reichsgaue and administrative districts. The very extensive records of the special court in Zichenau give the impression that, in particular, it was used as an instrument of repression against the Poles, and the special courts in the higher regional court district *(Oberlandesgerichtsbezirk)* of Posen, which was identical with the territory of the Wartheland Reichsgau, also appeared to predominantly dispense severe justice (especially the special court in Posen). Similarly, the number of death sentences handed down by the special court in Bromberg (in the higher regional court district of Danzig) was above average.[22] In general, it must be emphasized that the disciplinary role of the courts and their function as a crime deterrent did not just apply to the Polish and Jewish populations, but was also aimed at many ethnic German settlers *(Rücksiedler)* from the Baltic states, the Soviet Union, and other regions who had little experience of the ethnic-nationalist politics of National Socialism, or economic opportunists *("Konjunkturritter")* who hailed from the German Reich.

If one analyses the data for the special courts in the annexed Polish regions, which is only partially complete, it becomes apparent that there were only relatively few Jewish defendants – and after the summer of 1942, practically none. There are three reasons for this: first, the Jewish population in most of these areas had already been sent to ghettos between 1939 and 1942. Second, in the face of their precarious situation and draconian persecutions, the Jewish populations did whatever they could under the occupation to avoid further repression, meaning that they conformed as much as they possibly could even though it was generally difficult to avoid being found guilty

20 BArch, R 43 II/1549, fols. 61-3, hier fol. 61: RJM (9170 Ostgeb. 2–II a^2 996/41), signed by Schlegelberger and addressed to the Reich Chancellery, dated April 17, 1941, with reference to criminal law against Poles and Jews in the annexed eastern regions.

21 Schlüter, *Sondergericht Litzmannstadt*, *passim*.

22 Ibid., 80-4; Weckbecker, *Zwischen Freispruch und Todesstrafe*, 449.

of "criminal behaviour" given the number of discriminatory ordinances and prohibitions that they faced.[23] Third, of those Jews who fell into the hands of the criminal authorities, only in rare cases did they actually survive to appear before a special court. From the outset of the occupation, the murder of Jews was standard practice; but then, as a rule, the special courts also handed down tougher punishments for defendants who were classified as Jews.[24] Even a cursory glance through the trial documents of different special courts reveals that bills of indictment and court decisions were not short of statements such as "the untrustworthy Jew/Pole", "the shifty Jew", and so forth. Beginning in February 1942, to the detriment of Jewish defendants, Jewish witnesses were denied the right to testify in court, which reduced a defendant's chances of a successful defence even further.[25]

In sum, the wide range of possibilities provided by special criminal law were put to heavy use in the annexed eastern regions. Going one step further, in March 1942, the state attorney-general in Posen even suggested to the Reich Minister of Justice that the public prosecutors be given the power to issue sentences without trials.[26] In contrast to this, the state attorney-general in Kattowitz had already suggested earlier, at the beginning of January 1942, that especially mild sentences should be given in response to "crimes committed by Germans to the detriment of Poles and Jews",[27] a suggestion, however, which the Reich Ministry of Justice declined, apparently out of fear that the delinquent activities of Germans in occupied Poland, which already exceeded the national average for the German Reich, would get completely out of hand. All the same, provisions were written into criminal law which established a new type of imprisonment, namely, confinement in a penal camp (*Straflager*) and in a hard-labour penal camp (*verschärftes Straflager*) where prisoners "were to be kept busy with hard labour and severe labour",[28] which often simply amounted to incarceration in a concentration camp.

23 Schlüter, *Sondergericht Litzmannstadt*, 67.

24 On the Jewish genocide in the annexed regions, see Michael Alberti, *Die Verfolgung und Vernichtung der Juden im Reichsgau Wartheland 1939-1945* (Wiesbaden, 2004); Jacek Andrzej Młynarczyk and Jochen Böhler (eds), *Der Judenmord in den eingegliederten Gebieten 1939-1945* (Osnabrück, 2010).

25 Schlüter, *Sondergericht Litzmannstadt*, 68.

26 BArch, R 3001/20850, fol. 323: Generalstaatsanwalt Posen (414-1.6), unsigned, addressed to the Reich Ministry of Justice, c/o State Secretary Dr. Freisler, dated March 27, 1942, with reference to transferring authority for sentencing to the state prosecutor's office.

27 BArch, R 3001/20848, fol. 494: note from the Reich Ministry of Justice (9170 Ost/2 – II a^2 387.42), unsigned, dated February 2, 1942, with reference to the status report of the state attorney general's office in Kattowitz, dated January 3, 1942.

28 BArch, R 43 II/1549, fols. 96-100: Begründung zum Entwurf der Verordnung über die Strafrechtspflege gegen Polen und Juden in den eingegliederten Ostgebieten, dated September 25, 1942.

Throughout 1942, an extensive amount of correspondence was exchanged between the Reich Ministry of Justice and the Gauleiters and senior state prosecutors, especially those in the annexed eastern provinces, discussing the way in which criminal proceedings against Jews in their entirety were to be handed over to the police, that is, the Reichsführer-SS. Following an initial attempt at using police-organized summary courts (*Polizeistandgerichte*) in the fall of 1939, the idea was revived in the summer of 1942, when these courts took over "the vast majority of criminal prosecutions against 'foreign peoples'".[29] For Jews, the right to appeal was completely abrogated in 1942. Writing in response to a draft submitted by the Ministry of Justice, Reich Propaganda Minister Joseph Goebbels countered with an even more radical suggestion, "to revoke entirely the legal means for Jews within the justice system as well as the bureaucracy".[30]

Under Article 13 of the Reich Citizenship Law, adopted on July 1, 1943,[31] Jews were completely removed from the Criminal Ordinance for Poland and were placed from this point on entirely under special police laws, what was in fact, an altogether arbitrary system that existed beyond the bounds of any legal system at a time when the vast majority of Polish Jews in occupied Poland had already been murdered.

The Jewish population's complete loss of rights had in fact occurred much earlier in the General Government. For instance, as early as 1940, leaving the ghetto without permission could be punished with being shot on sight.[32] Unofficially, a similar practice almost certainly took root in the western regions of Poland as well. At a minimum, we do have a case that appeared before the special court in Kalisch, in which a Jewish defendant testified that he defended himself against a police officer only because it had been decided to shoot him.[33]

29 Becker, *Mitstreiter im Volkstumskampf*, 58.

30 BArch, R 3101/10435, fol. 14: Reichsminister for Public Enlightenment and Propaganda, signed by Goebbels (R 1400/23.7.42/122-1,9), addressed to the senior Reich administrators, dated August 12, 1942, with regard to limiting access to the legal system for Jews.

31 Dreizehnte Verordnung zum Reichsbürgergesetz vom 1. Juli 1943 (RGBl. I 1943, 372)

32 *Die Verfolgung und Ermordung der europäischen Juden durch das nationalsozialistische Deutschland 1933-1945*, vol. 4: *Polen September 1939 – Juli 1941*. Edited by Klaus-Peter Friedrich (München, 2011), 466-7, (document no. 211).

33 BArch, R 3001/138120, fols. 4-8: Judgment rendered by the special court in Kalisch, January 27, 1942.

Special Court Verdicts as a Social-Historical Source of the Occupation

It is actually surprising that researchers have paid very little attention to the rather large collection of documents left behind by most of the special courts.[34] Roughly speaking, about 30,000 special court files have survived, and of these, the records of the special courts in Litzmannstadt, Hohensalza, Kalisch, Bromberg, and Zichenau are by far the largest collections, kept today in the state archives in Łódź, Inowrocław, Bydgoszcz, Kalisz, and the Institute of National Remembrance (Instytut Pamięci Narodowej, IPN) in Warsaw. Only a few trial records survived from the largest special court, the one in the higher regional court district of Posen, but then, this collection includes hundreds of personal files, from the director of the regional court district down to the lowest-ranking assessor. Not only does this concentration of source material provide the opportunity to make a detailed analysis of particular criminal acts, it is also ideal for conducting comparative research on the conduct of the occupation authorities in the respective individual regions, to include biographical studies of the perpetrators. For a few areas, there are even reports from the judicial authorities, such as those for Königsberg.[35]

What remains for future research are fundamental questions pertaining, for example, to the identity of the judges and prosecutors, where they came from, what their ideological and professional backgrounds were, whether they moved to the annexed eastern territories voluntarily, and how their careers developed after 1945 in the various allied zones of occupation in Germany, and in West Germany after 1949 – where no special court judge had to worry that his wartime services "in the East" would catch up with him.

More important, perhaps, is the potential that these documents possess in regard of questions pertaining to the complexity of both Polish-German and Jewish-German relations – because, contrary to the common assumption that the large number of discriminatory decrees issued in the Reichsgau Wartheland point to the "efficiency" of regional legislation and jurisdiction, it would appear that the bulk of the legal provisions and the large number of cases that appeared before the special courts suggest otherwise. Indeed, they indicate that the National Socialist authorities were only partly successful in regulating and segregating the various ethnic groups. Alongside economic criminal proceedings that appeared before the special courts – as already

34 See, above all, Weckbecker, *Zwischen Freispruch und Todesstrafe*, as well as the previously mentioned studies by Becker and Schlüter.

35 Christian Tilitzki, *Alltag in Ostpreußen 1940-1945: Die geheimen Lageberichte der Königsberger Justiz 1940-1945* (Leer, 1998; Würzburg, 2003).

mentioned – the diverse types of contact that took place between ethnic groups (including denunciations) in occupied Poland were often the catalyst for investigations and the trials that followed.

Unofficial contact between Germans on the one side and Poles and Jews on the other was fundamentally understood as a political crime. The measures and regulations that were meant to curtail contact between these groups as much as possible were relatively numerous: they included a degrading mandatory greeting that had to be made to Germans, a ban on the use of the Polish language, practically non-existent insurance protection, a special Polish excise tax on already low wages, a ban on marriage before a certain age, which was imposed to artificially depress the birth rate, a ban on so-called mixed marriages *(Mischehen)* between Poles and Germans,[36] a practical ban on practicing one's religion in a number of places, segregated streetcars for Poles and Germans, separate cemeteries,[37] and even a ban initiated in November 1941 that forbade the sale of cake to Poles.[38] On the strength of National Socialist race laws, the special courts even passed verdicts based on retroactively applied law: in one case, the special court in Posen sentenced a thirty-eight-year-old ethnic German who had been a Polish citizen to three years imprisonment for "race defilement" *(Rassenschande)* because she had married a Polish Jew in Riga in 1937.[39]

Numerous memoranda and circular letters produced by the German authorities that focused on the relationship between Germans and Poles reveal what was at the heart of National Socialist policies of apartheid. Not only does this indicate how important this particular point was for the National Socialist ruling elites in the Warthegau – as well as in the rest of occupied Poland – but it also suggests that there was a great need for tighter regulation, or, to put it differently: that in reality, everyday contact between Poles and Germans often deviated from what was officially allowed and that these

36 APP, 299/835, fols. 237-41: signed Mehlhorn, Reich Governor Office, addressed to the district presidents in Posen, Hohensalza, and Litzmannstadt, dated March 21, 1941, with regard to the ban on marriages between ethnic Germans including those recognized as ethnic Germans, and ethnic Poles and other members of specific foreign groups.

37 Decree on cemetries in the Reichsgau Wartheland, from October 3, 1941, in VOBlRRW 1941, 539.

38 Regulation on the sale of cakes to Poles from November 10, 1941, in: VOBlRRW 1941, 584. For more on the development of this regulation, see APP, 299/835, fol. 156: District President of Posen, Abt. IV L (signed Daum), addressed to the National Food Office (*Landesernährungsamt*), Posen, dated October 8, 1941; APP, 299/854, fols. 4-5: Status report from the District President in Posen for the period from January 16 to February 15, 1941, dated February 21, 1941.

39 BArch, R 3001/137622, fols. 6-11: Judgment rendered by the special court in Posen on October 17, 1941.

boundaries were often set aside, especially since social contact could not be completely avoided. Numerous trials held before the special courts make it clear that, on the one hand, there was a large number of people who simply ignored these political boundaries, but on the other hand, that the punishment for overstepping these boundaries was drastic – even incarceration in a concentration camp, whereby the threshold here was much lower than in race defilement cases occurring in the so-called Old Reich (*Altreich*, i. e. Germany in the borders of 1937).

In fact, there were also Poles who hid Jews and helped them to flee, though the circumstances in the annexed territories made this more difficult than in the General Government. As a general rule, most of the cases coming before the special courts involving hiding Jews carried the death penalty; feeding Jews cut into the strategically important food supplies of the German people and this was sufficient reason to justify the death penalty: "What was especially reprehensible was that they [the defendants] took substantial amounts of meat from the food supply system and gave it to the Jews." A particularly unusual case appeared before the special court in Litzmannstadt in May 1944. A mother and son were sentenced to death, on the one hand, for undermining the well-being of the German people, and on the other hand for murder. The defendants had hidden three Jews for seven months, but then began to fear that they would be found out. So they murdered the three Jews, which was coincidentally discovered by the police, and which resulted in extensive investigations. In short, the defendants had no chance of survival, given that hiding Jews was reason enough to earn the death penalty. Still, this was probably the only case that came before a special court in which the defendants were sentenced for murdering Jews.[40]

In this context, a topic that can only be briefly touched upon is that of the special court trials that, after the passing of the Treachery Act *(Heimtückegesetz)* in December 1934, dealt with critical comments regarding the murder of European Jews. It should be noted that there were in fact a number of cases that appeared before the different special courts that led to charges being filed – though interestingly enough – against mostly German nationals in occupied Poland, for voicing criticisms against the extermination of the Jews. What is remarkable about these trials is not just the fact that there were, for example, in the fall of 1943, German nationals who, while living practically in the eye of the storm that was the struggle for ethnic dominance *("Volkstumskampf")*, were still willing to criticize the murder of Jews, and

40 BArch, R 3001/158738, fols. 2-8. The trial documents can be found in Archiwum Państwowe w Łodzi (APŁ), Sondergericht Litzmannstadt, no. 2752, *passim*. The trial is analyzed in Dorota Siepracka, 'Mordercy Żydów przed nazistowskim Sądem Specjalnym', *Pamięć i Sprawiedliwość,* 6 (2004), 233-46.

even saw Jews – according to one quote – as "magnificent people".[41] What the documents also very much show is that a general and sometimes even very detailed knowledge of the Holocaust existed amongst Germans – which is a very different conclusion that has often been reached in the debates of recent years regarding the level of knowledge of ordinary Germans about the Holocaust in "the East".

Conclusion

Research into the history of National Socialism often gives rise to underlying questions that ask how a bourgeois society in the middle of Europe could so radically transform itself within a short number of years, and set in motion a death machine swallowing unprecedented numbers of victims in their tens of millions. These questions are particularly pressing when looking at the special courts. Given the current state of research, the question cannot really be answered whether the striking legal decisions of the special courts conformed to the law's intentional assault on "foreign races", or whether there was a tendency for the courts to routinely interpret these laws even more radically. A comparison with special courts in the German Reich proper reveals only relatively few distinctive features, for instance, that the rulings in Bromberg and Posen were especially brutal and that they handed down death sentences at unusually high rates. Nonetheless, by using the special court in Litzmannstadt as an example, Holger Schlüter has convincingly indicated that "a sweeping will to annihilate, that could find a defendant guilty though it was known that the defendant was not guilty" is not supported by the evidence. Indeed, when considering the mass crimes of the SS, the Security Police, as well as the general police forces, there was no need for such action.[42]

In conclusion, we are left with the disturbing realization that parallel structures of jurisprudence on the one hand, and a system of mass criminality on the other, existed in the annexed Polish territories – and by extension, the General Government. This raises the question as to why anyone would want to look for justice to a judiciary that was reduced to pseudo-legal declarations, since such a judicial arrangement was no longer necessary to achieve the goals of the "negative population policy" ("*negative Bevölkerungspolitik*", Götz Aly). Show trials were not conducted, and, generally, the public only

41 BArch, R 3001/158074, fols. 2-3: bill of indictment from the special court in Litzmannstadt, dated April 7, 1943; BArch, R 3001/158095, fols. 2-4: bill of indictment from the special court in Posen, dated September 6, 1943.

42 See Schlüter, *Sondergericht Litzmannstadt*, 73.

found out about special court verdicts from press reports. Charges brought against individuals were not trumped up or bogus, but based on the hallmarks of crimes, albeit crimes defined according to National Socialist standards. At the very least, the German population could sleep soundly in the belief that German jurisprudence and the policies of the occupation authorities were a "success story", a story of legitimacy and justice, at least in the first years after 1939.

When looking at the development of special courts in occupied Poland, there are four distinguishing stages, namely 1) the installation of special courts in Germany proper long before 1939 as well as during the war; 2) the large number of special courts in the annexed territories being given greater responsibility and authority; 3) the Criminal Ordinance for Poland of December 1941, and 4) martial law enforced by the police after 1942. Nonetheless, this was in no way an evolutionary development. Rather, it is better understood as the steady erosion of legal principles and a sign that the courts, with the passage of time, were only of limited use to the objectives of the occupier's regime, or even stood in its way. Principles of law were distorted and successively emptied of meaning by 1942, after which date they were practically done away with altogether. Thus, even though special courts continued to function, their standards and norms became completely meaningless in face of Ernst Fraenkel's "prerogative state".

Maximilian Becker

Propaganda and Justice: The "Obornik Murder Trial", August 25 – September 4, 1941

Introduction

On September 9, 1941, the Breslau (Wrocław) newspaper *Schlesische Zeitung* published an article titled "Violent Polish Criminals Sentenced to Death for Hundreds of Murders" which declared:

> In a trial that lasted ten days, a special court in Posen (Poznań) has passed sentence in the case brought against a twenty-eight-member group that had escorted the march of the Obornik internees (*Oborniker Verschlepptenzug*). The two primary defendants […] were convicted for violent murder on each of the 133 counts, and [for] grievous bodily harm inflicted by a public official on 672 counts, and were sentenced to death on each count. Sixteen other defendants were also sentenced to death. Eight were found not guilty due to lack of evidence, while the remaining two were found not guilty because they had not been part of the escort.[1]

The defendants in this case were former Polish police officers and auxiliary police officers. According to the formal charges, beginning on September 4, 1939, they had transported 672 interned ethnic German civilians from Gniezno to Mory – a hamlet on the outskirts of Warsaw. Numerous internees died along the way, and according to the charges, the escort even used machine guns to kill as many people as possible. In addition, the prosecutor accused the defendants of abusing and torturing the prisoners. The term "march of the Obornik internees" (*Oborniker Verschlepptenzug*) that was used

1 'Polnische Gewaltverbrecher wegen Hunderten von Mordtaten zum Tode verurteilt', *Schlesische Zeitung*, (September 9, 1941).

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by German propaganda as well as the term "Obornik Murder Trial", which referred to the trial held by the special court, refers to the home region of roughly two-thirds of the German internees: they came from the western Polish county of Oborniki, which from 1939 to 1945 belonged to the Reichsgau Wartheland.[2] This forced relocation, a 260-kilometre trek on foot, went on record in Nazi propaganda as one of the "Polish atrocities" committed against ethnic Germans at the beginning of the war. But it should be added that the Nazi record of Polish atrocities was very extensive; it included other forced marches and assaults on the lives and property of ethnic German citizens in various towns and cities, but above all, it would seem, in Pomerania.[3]

Initial research into the "September crimes"[4] first appeared in Germany and Poland in the 1940s and 1950s.[5] Particular attention was devoted to the reconstruction of events, the role of the German minorities, and the number of German victims. Particular attention was paid to the "Bromberg Bloody Sunday", the most intensely researched episode in the war against Poland. Much of this attention grew out of a need to explain whether the incident had been a German diversion and whether agents of the SD had participated in it.[6] Because the forced marches were so relatively unknown, they gener-

2 'Charge of the Oberstaatsanwalt at the Special Court in Posen', (June 11, 1941), *Instytut Zachodni* (further referred to as *IZ*) Dok. I-490; 'Judgment of the Special Court I in Posen', (June 16, 1943), *IZ* Dok. I-490.

3 Hans Schadewaldt, *Die polnischen Greueltaten an den Volksdeutschen in Polen* (Berlin, 1940); *Dokumente polnischer Grausamkeit* (Berlin, 1940).

4 The term "September crimes" was seldom used by contemporaries, but has, nonetheless, generally appeared in (legal) historical research. In the sources, the terms that are commonly found include "September criminal cases" (*Septemberstrafsachen*), "Polish September murders", or "Polish September murderers".

5 Theodor Bierschenk, *Die deutsche Volksgruppe in Polen 1934-1939* (Kitzingen, 1954); Ryszard Wojan, *Bydgoszcz: Niedziela 3 września 1939 r.* (Toruń, 1959); Janina Wojciechowska, 'Przyczynek do udziału mniejszosci niemieckiej w hitlerowskiej akcji eksterminacyjnej', *Przegląd zachodni*, 14 (1958), 99-106; Józef Kołodziejczyk, *Prawda o tzw. krwawej niedzieli bydgoskiej* (Bydgoszcz, 1945).

6 Markus Krzoska, 'Bromberger Blutsonntag: Unklare Fakten, klare Interpretationen', in Hans-Henning Hahn and Robert Traba (eds), *Deutsch-polnische Erinnerungsorte,* vol. 2: *Geteilt, Gemeinsam* (Paderborn, 2014); Wiesław Trzeciakowski, *Śmierć w Bydgoszczy* (Bydgoszcz, 2013); Markus Krzoska, 'Der "Bromberger Blutsonntag" 1939', *Vierteljahrshefte für Zeitgeschichte,* 60/2 (2012), 237-48; Hans-Erich Volkmann, 'Der Bromberger Blutsonntag – oder von der Gegenwärtigkeit der Geschichte', in Bernd Rill (ed), *Nationales Gedächtnis in Deutschland und Polen* (München, 2011), 61-9; Markus Krzoska, 'Zweierlei Morde: Die Bromberger Ereignisse im September 1939', *Inter Finitimos,* 7 (2009), 184-93; Przemysław Olstowski, 'W sprawie tragidcznych wydarzen 3-4 X 1939 roku w Bydgoszczy', *Zapiski historyczne,* 74 (2009), 115-43; Zbigniew Kaczmarek, Włodzimierz Kałdowski, and Włodzimierz Sobecki (eds), *Bydgoszcz – Bromberg: Wybrane fragmenty wspólnej polsko-niemieckiej historii wg seniorów bydgoskich 1939-2009 w 70. rocznicę wybuchu II wojny światowej* (Bydgoszcz, 2009);

Tomasz Chinciński and Paweł Machcewicz (eds), *Bydgoszcz – 4 września 1939: Studia i dokumenty* (Warszawa, 2008); Robert Grochowski, 'Jeszcze o wojskowych aspektach bydgoskiej "krwawej niedzieli": W odpowiedzi na polemiki Tomasza Chincińskiego i Przemysława Olstowskiego', *Kronika Bydgoska,* 29 (2007), 521-32; Tomasz Chinciński, 'W kwestii "wybranych aspektów" Roberta Grochowskiego w kontekście wydarzeń bydgoskich z 3 i 4 września 1939 r.', *Kronika Bydgoska,* 29 (2007), 573-83; Przemysław Olstowski, 'Garść uwag i refleksji na marginesie artykułu Roberta Grochowskiego', *Kronika Bydgoska* 29 (2007), 585-607; Robert Grochowski, 'Wybrane aspekty działań bojowych jednostek Armii "Pomorze" od 1 do 6 września 1939 roku w kontekście wydarzeń bydgoskiej "krwawej niedzieli": Cz. 2', *Kronika Bydgoska* 28 (2006), 229-44; Robert Grochowski, 'Wybrane aspekty działań bojowych jednostek Armii "Pomorze" od 1 do 6 września 1939 roku w kontekście wydarzeń bydgoskiej "krwawej niedzieli": Cz. 1', *Kronika Bydgoska,* 27 (2005), 171-230; Zbigniew Kołakowski, *Historia walki młodzieży szkolnej i harcerzy z dywersją niemiecką: Bydgoszcz, 3 wrzesień 1939 r.* (Bydgoszcz, 2005); Piotr Datkiewicz, 'Franz von Gordon – rzekomy przywódca dywersji 3 września 1939 r. w Bydgoszczy', *Kronika Bydgoska,* 26 (2004), 487-506; Piotr Saja, 'Sabotaż i dywersja niemiecka w rejonie "przedmościa bydgoskiego" w 1939 roku w świetle wojskowych źródeł polskich', *Zimia Kujawska*, 17 (2004), 193-211; Volker Sinemus, 'Gebrochene Erinnerung: Der so genannte "Bromberger Blutsonntag" in polnischen und deutschen Geschichtsbüchern', *Geschichte lernen*, 17/102 (2004), 52-6; Witold Kulesza, 'Nie zamierzam podejmować żadnej polemiki: Wokół mitu "bydgoskiej krwawej niedzieli"', *Biuletyn Instytutu Pamięci Narodowej*, 12/1 (2003/2004), 4-23; Włodzimierz Jastrzębski, 'Die deutsche Minderheit im September 1939 in Polen, in Sonderheit in Bromberg', *Beiträge zur Geschichte Westpreußens*, 18 (2002), 155-63; Hugo Rasmus, 'Zur Bewertung der September-Ereignisse 1939 in Polen, besonders in Bromberg', *Beiträge zur Geschichte Westpreußens*, 18 (2002), 165-86; Janusz Kutta (ed), *Pierwsze dni września 1939 roku w Bydgoszczy, materiały z sympozjum* (Bydgoszcz, 2001); Günter Schubert, *Das Unternehmen "Bromberger Blutsonntag": Tod einer Legende* (Köln, 1989); Tadeusz Jaszowski, 'Bydgoszcz, 3 września 1939 r. Polska wersja wydarzeń', *Wojskowy Przegląd Historyczny*, 33/2 (1988), 121-32; Tadeusz Jaszowski, 'Dywersja hitlerowska w Bydgoszczy w dniu 3 września 1939 r. w świetle polskich materiałów wojskowych', *Kronika Bydgoska*, 10 (1986-1988), 217-28; Włodzimierz Jastrzebski, 'Polsko-zachodnioniemiecki spór historiograficzny wokół problematyki wydarzen bydgoskich z wrzesnia 1939 roku', in Józef Koszek (ed), *Polska a RFN: Aktualność i przyszłość stosunków* (Bydgoszcz, 1986), 11-31; Edward Serwański, *Dywersja niemiecka i zbrodnie hitlerowskie w Bydgoszczy na tle wydarzeń w dniu 3 IX 1939* (Poznań, 1984); Tadeusz Jaszowski, 'Verlauf der nationalsozialistischen Diversion am 3. September 1939 in Bydgoszcz', *Polnische Weststudien*, 2 (1983), 313-27; Karol Marian Pospieszalski, 'Der 3. September 1939 in Bydgoszcz im Spiegel deutscher Quellen', *Polnische Weststudien*, 2 (1983), 329-55; Włodzimierz Jastrzebski, 'Tzw. bydgoska krwawa niedziela w świetle zachodnioniemieckiej literatury historycznej', *Przegląd zachodni*, 39/5-6 (1983), 255-62; Włodzimierz Jastrzębski, *Der Bromberger Blutsonntag: Legende und Wirklichkeit* (Poznan, 1970); Richard Breyer, 'Die Septemberereignisse 1939 in polnischer Sicht', *Jahrbuch Weichsel-Warthe*, 15 (1969), 28-35; Franciszek Bernas and Julitta Mikulska-Bernas, *Bydgoski wrzesień* (Warszawa, 1968); Wiesław Trzeciakowski and Włodimierz Sobecki, *"Krwawa Niedziela" w Bydgoszczy czyli jedyny pasujący klucz do wydarzeń z 3 i 4 września 1939* (Bydgoszcz, n.d.). Among the books devoted to the Bromberg incidents are a large number that express obvious rightwing extremist tendencies, such as: Bernhard Lindenblatt, *Bromberger Blutsonntag: Todesmärsche, Tage des Hasses, polnische Greueltaten* (Kiel, 2001); Rudolf Trenkel, *Der Bromberger Blutsonntag im September 1939 oder Die gezielte Provokation zu Beginn des Zweiten Weltkrieges: Wie es damals wirklich war* (Norderstedt, 1981).

ated substantially less interest.[7] The available source materials leave much to be desired: almost all the documentation relating to German internees or other victims of Polish outrages is of German provenance, and most of it are propaganda pamphlets (*Propagandaschriften*).[8]

7 For a general overview of the "September crimes" see: Tomasz Chinciński, *Forpoczta Hitlera. Niemiecka dywersja w Polsce w 1939 roku* (Warszawa, 2010); but also: Grzegorz Bębnik, '"Kowalski i towarzysze": Epizod z dziejów niemieckiej dywersji w sierpniu i wrześniu 1939 roku', *Szkice Archiwalno-Historyczne*, 6 (2010), 67-78; Piotr Saja, 'Dywersja niemiecka i walki na Pomorzu we wrześniu 1939 roku', *Przegląd zachodni*, 65/2 (2009), 176-92; Albert S. Kotowski, 'Die deutsche "Fünfte Kolonne" in Polen im September 1939: Zur deutschen und polnischen Geschichtsschreibung', in Susanne Kuß and Heinrich Schwendemann (eds), *Der Zweite Weltkrieg in Europa und Asien: Grenzen. Grenzräume. Grenzüberschreitungen* (Freiburg, 2006), 75-88; Tomasz Chinciński, 'Niemiecka dywersja w Polsce w 1939 r. w świetle dokumentów policyjnych i wojskowych II Rzeczypospolitej oraz służb specjalnych III Rzeszy, część 2 (sierpień – wrzesień 1939 r.)', *Pamięć i sprawiedliwość*, 9/1 (2006), 165-97; Tomasz Chinciński, 'Niemiecka dywersja w Polsce w 1939 r. w świetle dokumentów policyjnych i wojskowych II Rzeczypospolitej oraz służb specjalnych III Rzeszy, część 1 (sierpień – wrzesień 1939 r.)', *Pamięć i sprawiedliwość*, 8/2 (2005), 159-95; Tomasz Chinciński, 'Niemiecka dywersja we wrześniu 1939 r. w londyńskich meldunkach', *Biuletyn Instytutu Pamięci Narodowej*, 8-9 (2004), 31-44; Karol Marian Pospieszalski, 'Dywersja Niemieckich Służb Specjalnych', in Janusz Kutta (ed), *Pierwsze dni września 1939 roku w Bydgoszczy materiały z sympozjum* (Bydgoszcz, 2001), 14-36; Włodzimierz Jastrzębski, *Die deutsche Minderheit in Polen: Geschichte und Gegenwart* (Warszawa, 1996); Mieczysław Kozak and Marek Pawłowski, 'Harcerstwo łódzkie w walce z hitlerowską dywersją w 1939 roku', *Harcerstwo*, 34/4-5 (1992), 26-35; Karol Marian Pospieszalski, 'Der Bombenanschlag von Tarnów und andere Nazi-Provokationen vor und nach Kriegsausbruch 1939: Hat Hitler die Verluste der deutschen Minderheit gewollt?', *Polnische Weststudien*, 5/2 (1986), 285-318; Karol Marian Pospieszalski, *Sprawa 58000 "Volksdeutschów": Sprostowanie hitlerowskich oszczerstw w sprawie strat niemieckiej mniejszości w Polsce w ostatnich miesiącach przed wybuchem wojny i w toku kampanii wrześniowej* (Poznań, 1981); Przemysław Hauser, 'Mniejszosc niemiecka na Pomorzu we wrzesniu 1939 r.: relacje mieszkanców wsi', *Przegląd zachodni*, 28/5-6 (1972), 76-85; Otto Heike, 'Die ersten Opfer des Zweiten Weltkrieges: Fälschung und Wahrheit über den Umfang der Gewaltmaßnahmen gegen die Deutschen in Polen im September 1939', *Zeitschrift für Ostforschung*, 18 (1969), 475-82; Peter Aurich, *Der deutsch-polnische September 1939: Eine Volksgruppe zwischen den Fronten* (Berlin, 1969).

8 Gottfried Hein, *Unser letzter Weg in Polen: Rückblick auf die Erlebnisse bei dem Marsch der Posener Internierten im September 1939* (Posen, 1940); Theophil Krawielitzki (ed), *Schreckenstage in Polen: Schwestern-Erleben im September 1939* (Marburg, 1940); Fritz Steuben (ed), *Der Marsch nach Lowitsch: Ein Bericht: Nach den Erzählungen seines Bruders Reinhold Wittek und anderer niedergeschrieben von Erhard Wittek* (Berlin, 1941); Fritz Menn, *Auf den Straßen des Todes: Leidensweg der Volksdeutschen in Polen* (Leipzig, 1940); Hans Hartmann, *Höllenmarsch der Volksdeutschen in Polen, September 1939: Auf Grund ärztlicher Dokumente dargestellt* (Berlin, 1940); Richard Kammel, *Kriegsschicksale der deutschen evangelischen Gemeinden in Posen und Westpreußen: Ein Gedenkbuch an die Septembertage 1939* (Berlin, 1941); Richard Kammel, *"Er hilft uns frei aus aller Not": Erlebnisberichte aus den Septembertagen 1939* (Posen, 1940); English

In addition, for the Obornik forced march, there is also a "documented report" (*Dokumentarbericht*) produced by one of the survivors[9] that appeared in the 1990s; but it is of questionable value.[10] Other sources stem from the investigations and the trials that took place during the Nazi period, though, in the case of the Obornik march, only the charges and verdicts handed down during the "murder trial" by the Special Court in Posen have survived. Witness testimonies produced during the trial no longer exist, given that the documents produced by the special court and the state prosecutor have been lost. That being said, the primary purpose of this study is not to reconstruct the actual events.

Some studies also investigated National Socialist propaganda that picked up on the incidents and, in particular, greatly exaggerated the number of victims.[11] Where only a few hundred deaths were initially mentioned, after 1940, the number of murdered Germans rose to 58,000. After September 1941, this number increased to 60,000, and after Hitler's Reichstag speech, made three months later, it was 62,000. The special courts quoted these figures as *bona fide* in their deliberations. From early on, it was understood that the persecution and murder of ethnic Germans by Poles was to be used as a justification for the German invasion and occupation of Poland.[12] Case studies are available that consider photo journalism and the press.[13] Less researched, in contrast, were the reports on legal proceedings published in newspapers. In those studies that focused their attention on the special

edition: Richard Kammel, *The Fate of the German Protestant parishes in Posen and West Prussia during the Polish campaign: A book in commemoration of the September days 1939* (Berlin, 1940); Richard Kammel, "*The Lord will deliver us from all tribulation": September 1939: An Account of personal experiences* (Posen, 1940). Other propaganda reports were published privately and are to some extent very widespread.

9 Charlotte Lembke-Arndt, *Ich war verschleppt: Dokumentarbericht über den Verschleppungsmarsch der Gnesener und Oborniker nach Lowitsch im September 1939* (Kelkheim / Taunus, 1993).

10 The text was produced more than forty years after the fact and relies in part on Kurt Lück, *Marsch der Deutschen in Polen: Deutsche Volksgenossen im ehemaligen Polen berichten über Erlebnisse in den Septembertagen 1939* (Berlin, 1940).

11 Doris L. Bergen, 'Instrumentalization of 'Volksdeutschen' in German propaganda in 1939: Replacing / Erasing Poles, Jews, and Other Victims', *German Studies Review*, 31 (2008), 447-70; Thomas Kees, *"Polnische Greuel": Der Propagandafeldzug des Dritten Reiches gegen Polen* (Saarbrücken, 1994); Król, *Polska i Polacy*, 274-77.

12 Martin Broszat, *Nationalsozialistische Polenpolitik 1939-1945* (Frankfurt am Main-Hamburg, 1965), 50-1.

13 Miriam Y. Arani, *Fotografische Selbst- und Fremdbilder von Deutschen und Polen im Reichsgau Wartheland 1939-45 unter besonderer Berücksichtigung der Region Wielkopolska*, 2 vols., (Hamburg, 2008); Elżbieta Nowiekiewicz, 'Prasa o wydarzeniach w Bydgoszczy z 3-4 września 1939 roku', in Tomasz Chinciński and Paweł Machcewicz (eds), *Bydgoszcz 3-4 września 1939: Studia i dokumenty* (Warszawa, 2008), 805-21.

courts, the public perception of the courts' judgments was largely ignored. Only one study, by a Polish historian, discusses newspaper reports devoted to special court proceedings in Litzmannstadt (Łódź),[14] but then again that study does not really focus on the "September Crimes".[15]

The purpose of this paper is to explore the role of media coverage devoted to the trials. This will be accomplished by examining newspaper articles pertaining to the "Obornik Murder Trial". The unusual length of this trial – it took the court eight days to hear a total of 119 witnesses – allowed for detailed coverage of the trial to appear in the press, with the *Ostdeutscher Beobachter*, the Nazi *Gauzeitung* for Posen, having devoted the most attention by far to the trial.[16] Eight extensive articles in dense-packed print appeared in this newspaper.[17] A report on the court's final judgment appeared as the leading article for the September 5, 1941 issue.[18] An additional editorial also appeared in the same issue.[19] On September 19, 1941, the completion of the

14 Jan Waszczyński, 'Prasa hitlerowska o wyrokach Sondergerichtu (Sądu specjalnego) w Łodzi', *Rocznik Łódzki*, 19 (1972), 67-79.

15 Also see: Maximilian Becker, 'Justiz und Propaganda: "Polengreuel"-Prozesse in den eingeliederten Ostgebieten in Presse und Publizistik 1939-1945', *Zeitschrift für Ostmitteleuropa-Forschung*, 64/1 (2015), 1-39.

16 Die Tagespresse des Großdeutschen Reiches 1944 ([Berlin], [1944]).

17 'Die Tragödie der Oborniker Verschleppten: Heute Beginn der Verhandlung vor dem Sondergericht in Posen – Auf den Spuren des Leidensmarsches', *Ostdeutscher Beobachter*, (August 25, 1941), 4; 'Der erste Tag im Oborniker Mordprozeß: Der Beginn der Beweisaufnahme – Die alte Taktik: Die Greueltaten werden stur geleugnet', *Ostdeutscher Beobachter*, (August 26, 1941), 4; 'Die ersten Zeugen im Oborniker Mordprozeß: Zwei Teilnehmer des Verschlepptenzuges sagen aus – Die ersten Gegenüberstellungen', *Ostdeutscher Beobachter*, (August 27, 1941), 4; 'Mit Kolben, Bajonetten und Gummiknüppeln: Unvorstellbare Martyrien des ersten Oborniker Verschlepptenzuges – Weitere Teilnehmer sagen aus', *Ostdeutscher Beobachter*, (August 28, 1941), 4; '"Jetzt habe ich dir polnische Kultur beigebracht": Der vierte Verhandlungstag im Oborniker Mordprozeß – Sogar Leichen wurden in Mory geplündert', *Ostdeutscher Beobachter*, (August 29, 1941), 5; '"Solange treiben, bis ihr alle erledigt seid!" Der fünfte Tag im Oborniker Mordprozeß – Abgeschossene deutsche Flieger im Verschlepptenzug', *Ostdeutscher Beobachter*, (August 30, 1941), 4; 'Erstes Geständnis im Oborniker Mordprozeß: Dienstag Plädoyer des Staatsanwalts und der Verteidiger – Am Donnerstag Urteilsverkündung', *Ostdeutscher Beobachter*, (August 31, 1941), 5; 'Zwei 807-fache Todesstrafen beantragt: Die Plädoyers im Obornicker Mordprozeß – Staatsanwalt plädiert für 18 weitere Todesurteile und 10 Freisprüche', *Ostdeutscher Beobachter*, (September 3, 1941), 4.

18 '18 Todesurteile für tausendfache Schuld: Die beiden Hauptverbrecher des ersten Obornicker Verschleppten-Zuges je 805mal zum Tode verurteilt – Todesstrafe gegen 16 weitere polnische Mörder verhängt', *Ostdeutscher Beobachter*, (September 5, 1941), 1-2.

19 Arthur Reiss, 'Marsch des Grauens: Zum Urteil des Posener Sondergerichts', *Ostdeutscher Beobachter*, (September 5, 1941), 1-2.

trial produced a brief report on the execution of the condemned.[20] The reports in the *Ostdeutscher Beobachter* make up the heart of the source material covered in this study. However, other newspapers from other corners of the Reich also reported on this event, including the *Schlesische Zeitung* from Breslau (quoted above in the opening paragraph).[21] For the media, whose coverage of court trials was typically limited to brief dispatches, the attention that this single trial received was unusual. This underscores the importance of the case for propaganda purposes.

Research into the German legal system and its activities in those areas that were incorporated into Germany's eastern regions has been undertaken by Polish legal historians since the 1960s.[22] Only a small amount of research has

20 'Die Todesurteile vollstreckt: Gerechte Sühne für den Oborniker Verschlepptenzug', *Ostdeutscher Beobachter*, (September 19, 1941), 4.

21 For court reports under National Socialism, see Anders, *Strafjustiz*, 178-91, Dietmar Gruchmann, *Die Öffentlichkeitsarbeit der Justiz im Wandel der politischen Systeme: Eine Studie am Beispiel des Freistaates Bayern* (Garching, 1994); Joachim Siol, "Justiz und Tagespresse in der NS-Zeit", in *175 Jahre Oberlandesgericht Oldenburg: 1814 Oberappellationsgericht – Oberlandesgericht 1989: Festschrift* (Köln, 1989), 323-36.

22 For an introduction see: Tadeusz Jaszowski, *Hitlerowskie prawo karne na Pomorzu 1939-1945* (Warszawa, 1989); Alfred Konieczny, *Pod rządami wojennego prawa karnego Trzeciej Rzeszy Górny Śląsk 1939-1945* (Warszawa-Wrocław, 1972). For a general overview of the legal system of the "Third Reich": Franciszek Ryszka, *Państwo stanu wyjątkowego. Rzecz o systemie państwa i prawa Trzeciej Rzeszy* (Wrocław, 1985). In addition, see: Alfred Konieczny, 'Organizacja wymiaru sprawiedliwości na Śląsku w latach II wojny światowej', *Studia historycznoprawne*, 249 (1996), 177-205; Alfred Konieczny, 'Dążenia do wyłączenia kompetencji hitlerowskiego trybunału narodowego przy ściganiu Polaków z obszarów włączonych do Rzeszy', *Acta universitatis wratislaviensis – prawo*, 121 (1984), 145-66; Stanisław Godlewski, 'Sądownictwo III Rzeszy na okupowanych terenach polski włączonych do Rzeszy', in Czesław Pilichowski (ed), *Zbrodnie i sprawcy: Ludobójstwo hitlerowskie przed sądem ludzkości i historii* (Warszawa, 1980), 526-43; Tadeusz Martyn, 'Sądownictwo niemieckie na terenie kaliskiej', in Antoni Czubiński (ed), *Zbrodnie hitlerowskie na ziemi kaliskiej w latach 1939-1945* (Kalisz, 1979), 169-97; Karol Jonca, Alfred Konieczny, and Franciszek Połomski, *Działalność Gestapo – sądownictwo specjalne dla Polaków i Zydów obozy i więzienia na Śląsku* (Wrocław, 1964); Leon Teresiński, 'O działalności Sądu Wojennego Rzeszy w okresie II wojny światowej', *Biuletyn Głównej Komisji Badania Zbrodni Hitlerowskich w Polsce,* 24 (1972), 169-221. Important, but only available as "gray literature": Konrad Ciechanowski, 'Sądownictwo i więziennictwo na terenie Pomorza Gdańskiego w latach 1939-1945', in *Sympozjum:* "*Hitlerowskie sądownictwo, więziennictwo i obozy w okręgu Rzeszy Gdańsk-Prusy Zachodnie 1939-1945"* (Sztutowo, 1976), unpag. Also: Bogdan Chrzanowski, 'Stan wiedzy o sądownictwie, więziennictwie i obozach na Pomorzu w świetle wydawnictw podziemnych oraz dokumentów Delegatury RP na Kraj'*, Referaty i komunikaty na sesję popularno-naukową: Formy i rozmiary eksterminacji ludności polskiej na Pomorzu Gdańskim w latach 1939-1945: Część 1* (Gdańsk and Elbląg, 1982), 132-58; Konrad Ciechanowski, 'Sądownictwo i więziennictwo na terenie Pomorza Gdańskiego w latach 1939-1945', in *Sympozjum: "Hitlerowskie sądownictwo, więziennictwo i obozy w okręgu Rzeszy Gdańsk-Prusy*

been done by Germans.[23] Particular attention has been given to the special court in Bromberg (Bydgoszcz), whose complete records have remained intact.[24] The National Socialist judicial body for which the most research has been published has been the court in Bromberg, and this is largely due to the "September crimes".[25] Furthermore, the testimonies that are included among

Zachodnie 1939-1945" (Sztutowo, 1976), unpag.; Tadeusz Olejnik, 'Sądownictwo niemieckie w powiecie wielunskim i jego rola w walce z polskoscia w latach 1939-1945', *Sesja Naukowa "Eksterminacyjna polityka okupanta hitlerowskiego w Sieradzkiem": Referaty i komunikaty* (Łask, 1983), unpag.

23 Maximilian Becker, *Mitstreiter im Volkstumskampf: Deutsche Justiz in den eingegliederten Ostgebieten 1939-1945* (München, 2014); Christoph U. Schminck-Gustavus, 'NS-Justiz und Besatzungsterror: Zur nationalsozialistischen Rechtspolitik im besetzten Polen 1939-1945', in Norman Paech and Gerhard Stuby (eds), *Wider die "herrschende Meinung": Beiträge für Wolfgang Abendroth* (Frankfurt am Main-New York, 1982), 13-50; Diemut Majer, *"Fremdvölkische" im Dritten Reich: Ein Beitrag zur nationalsozialistischen Rechtssetzung und Rechtspraxis in Verwaltung und Justiz unter besonderer Berücksichtigung der eingegliederten Ostgebiete und des Generalgouvernements* (Boppard am Rhein, 1981); Ludwig Nestler, 'Zum Aufbau und zur Tätigkeit der faschistischen Sondergerichte in den zeitweilig okkupierten Gebieten Polens', *Jahrbuch für Geschichte,* 10 (1974), 579-631; Broszat, *Nationalsozialistische Polenpolitik*, 137-57. Apologetic: Günther Moritz, *Gerichtsbarkeit in den von Deutschland besetzten Gebieten 1939-1945* (Tübingen, 1955). Specialized studies devoted to single aspects include Maximilian Becker, 'Konfrontation oder Kooperation? Polizei und Justiz in den "eingegliederten" Ostgebieten', in Wolfgang Schulte (ed), *Die Polizei im NS-Staat. Beiträge eines internationalen Symposiums an der Deutschen Hochschule der Polizei in Münster* (Frankfurt am Main, 2009), 371-87; Bernward Dörner, 'Justiz und Judenmord: Todesurteile gegen Judenhelfer in Polen und der Tschechoslowakei 1942-1944', in Norbert Frei, Sybille Steinbacher, and Bernd C. Wagner (eds), *Ausbeutung, Vernichtung, Öffentlichkeit: Neue Studien zur nationalsozialistischen Lagerpolitik* (München, 2000), 249-63.

24 Edmund Zarzycki, *Działalność hitlerowskiego sądu specjalnego w Bydgoszczy w latach 1939-1945* (Bydgoszcz, 2000); Edmund Zarzycki, *Besatzungsjustiz in Polen: Sondergerichte im Dienste deutscher Unterwerfungsstrategie* (Berlin, 1990); Edmund Zarzycki, *Eksterminacyjna i dyskryminacyjna działalność hitlerowskich sądów okręgu Gdańsk-Prusy Zachodnie w latach 1939-1945* (Bydgoszcz, 1981); Alexandra Chrośniakowski and Kazimierz Chrośniakowski, 'Z działalność hitlerowskiego sądu specjalnego (Sondergericht) w Bydgoszczy (1939-1945)', *Bydgoskie towarszystwo naukowe – Prace komisji historii*, 1 (1963), 87-107. – For a detailed analysis of case law by a German legal historian: Gerd Weckbecker, *Zwischen Freispruch und Todesstrafe: Die Rechtsprechung der nationalsozialistischen Sondergerichte Frankfurt/Main und Bromberg* (Baden-Baden, 1998).

25 Specialized studies devoted to these trials include: Edmund Zarzycki, 'Polscy żołnierze przed hitlerowskim sądem specjalnym w Bydgoszczy', in *Z okupacjnych dziejów Bydgoszczy* (Warszawa-Poznań, 1977), 3-32; Edmund Zarzycki, *Działalność hitlerowskiego sądu specjalnego w Bydgoszczy w sprawach o wypadki z września 1939 roku* (Warszawa-Poznań, 1976). For a popular historical investigation into a single case, see 'Proces Stanisławy Koszcząb', *Biuletyn Instytutu Pamięci Narodowej,* (2003/2004), 76-80. Information on this case can be found in, among others, Trzeciakowski and

the court records are important sources for "Bloody Sunday",[26] even though these should be used with care – Polish defendants and witnesses were often tortured, while many German witnesses apparently lied or used their day in court to settle old scores. Numerous accounts can also be found in the records of the special court in Lodz (Litzmannstadt),[27] including those for the trials held for the "September crimes".[28] In contrast to Bromberg, in the eastern parts of Warthegau, these kinds of cases only made up a small part of the court proceedings.[29] Other special courts in the incorporated eastern regions, on the other hand, have been hardly researched,[30] and this in spite of the fact that a number of them – the special courts in Hohensalza, Kalisch, and Zichenau – left behind large collections of records that have been preserved.

Sobecki, *"Krwawa Niedziela" w Bydgoszczy,* 91-100; Trzeciakowski, *Śmierć w Bydgoszczy*, 430-60; Tadeusz Jaszowski, *Hitlerowskie prawo karne na Pomorzu 1939-1945* (Warszawa, 1989). For more on the "September crimes" that were brought before the district court of Wirsitz, see Edmund Zarzycki, 'Działalność hitlerowskiego sądu lokalnego w Wyrzysku w latach 1939-1945', *Rocznik Nadnotecki*, 13-14 (1982/83), 51-67.

26 Edmund Zarzycki, 'Deutsche Diversion am 3. September 1939 in Bydgoszcz aus der Sicht der Akten des Nazisondergerichts in Bydgoszcz', *Polnische Weststudien*, 2 (1983), 299-312; Tomasz Rabant, 'Dokumenty sądu specjalnego w Bydgoszczy (Sondergericht Bromberg) z lat 1939-1941', in Tomasz Chinciński and Paweł Machcewicz (eds), *Bydgoszcz 3-4 września 1939: Studia i dokumenty* (Warszawa, 2008), 422-60.

27 The special court was initiated on September 18, 1939 with the special court in Lodz. By the end of November 1939, it was called Lodsch Special Court, and after April 1940, the Litzmannstadt Special Court.

28 Holger Schlüter, *"… für die Menschlichkeit im Strafmaß bekannt …": Das Sondergericht Litzmannstadt und sein Vorsitzender Richter* (n. p., n. d., [2007]); Jan Waszczyński, 'Z działalności hitlerowskiego Sądu specjalnego w Łodzi (1939-1945)', *Biuletyn Głównej Komisji Badania Zbrodni Hitlerowskich w Polsce*, 24 (1972), 14-104; Jan Waszczyński, 'Działalność hitlerowskiege Sądu specjalnego w Łodzi w latach 1939-1945', in Czesław Pilichowski (ed), *Zbrodnie i sprawcy: Ludobójstwo hitlerowskie przed sądem ludzkości i historii* (Warszawa, 1980), 544-56; ohne Bezug zu "Septemberverbrechen": Dorota Siepracka, 'Mordercy Żydów przed nazistowskim Sądem Specjalnym', *Pamięc i Sprawiedliwość*, 6/2 (2004), 233-46; Ludwik Planer, 'Sprawa karna przed niemieckim Sądem Specjalnym w Łodzi o pomoc dla jeńców angielskich', *Biuletyn Głównej Komisji Badania Zbrodni Hitlerowskich w Polsce*, 25 (1978), 97-143.

29 Schlüter, *"… für die Menschlichkeit im Strafmaß bekannt …"*, 91.

30 For the special court in Posen, there is merely one article that deals with a single case, and its focus is not on the "September crimes": Witold Kulesza, 'Sprawa ks. Wincentego Harasimowicza przed niemieckim sądem specjalnym – analiza akt procesu', in Antoni Galiński and Marek Budziarek (eds), *Akcje okupanta hitlerowskiego wobec Kościoła katolickiego w Kraju Warty* (Łódź, 1997). An additional study looks at the special court in Thorn: Kazimierz Przybyszewski, 'Z działalności hitlerowskiego Sądu Specjalnego (Sondergericht) w Toruniu 1942-1943', *Rocznik toruński*, 2 (1967), 71-86.

Forced Marches of Internees and "Bromberg Bloody Sunday": Incidents, German Retribution, and Propaganda

The forced march of internees from Gniezno to Mory was not the only one to have occurred at the beginning of the war. After August 30, 1939, the Polish authorities arrested prominent representatives of the German and Ukrainian minorities or persons otherwise designated as disloyal, to prevent diversionary actions in case of a German attack.[31] On September 1, the campaign of arrests was expanded, a decision that affected fifteen thousand Germans[32] – ten thousand of whom lived in Greater Poland, which had been the Prussian province of Posen until 1919.[33] At the same time, ethnic Germans were removed into the interior. Catastrophic circumstances usually accompanied these movements of people. According to various sources, between 1178 and 2200 of those who were detained died.[34] Some were shot by their guards, others died of exhaustion or were victims of German air attacks.[35]

Following the German occupation, special courts in Posen and Bromberg investigated these marches, shedding light on cases that came to be known collectively as the "September Crimes". Alongside these were also cases brought before the special courts in Danzig (Gdańsk), Konitz (Chojnice), Graudenz (Greudziądz), Thorn (Toruń), Litzmannstadt (Łódź), and Hohensalza (Inowrocław) for murders and assaults against Germans, and especially those cases that were tried in Bromberg and designated by Nazi propaganda as the "Bromberg Bloody Sunday".[36]

On September 3 and 4, 1939, retreating units of the Polish army moved through the city, which served as the exit from the "Polish corridor". As a result of a road accident and a subsequent traffic jam, a panic broke out. Shots

31 Czesław Madajczyk, *Die Okkupationspolitik Nazideutschlands in Polen 1939-1945* (Berlin, 1987), 9-10.

32 Christoph Schutte, 'Großpolen', in *Online-Lexikon zur Kultur und Geschichte der Deutschen im östlichen Europa,* 2013. URL: ome-lexikon.uni-oldenburg.de/54146.html [24 September 2015].

33 *Die Verschleppung der Deutschen aus Posen und Pommerellen im September 1939: Eine Dokumentation, im Auftrag der Historisch-Landeskundlichen Kommission für Posen und das Deutschtum in Polen*, compiled and edited by Hans Freiherr von Rosen (Berlin-Bonn, 1990), 18; besides members of the German minority, Ukrainians and Communists were also interned (Czesław Madajczyk, *Die Okkupationspolitik Nazideutschlands in Polen 1939-1945* (Berlin, 1987), 9-10).

34 Catherine Epstein, *Model Nazi: Arthur Greiser and the Occupation of Western Poland* (New York, 2010), 121-2.

35 Jastrzębski, *Der Bromberger Blutsonntag*, 170; Trzeciakowski and Sobecki, *"Krwawa Niedziela" w Bydgoszczy*, 100.

36 Zarzycki, *Eksterminacyjna i dyskryminacyjna działalność,* 45-71; Schlüter, *"… für die Menschlichkeit im Strafmaß bekannt …"*, 91-5.

were fired, but it was never conclusively determined who fired on whom, and whether German saboteurs hadn't engaged Polish soldiers. Similar events also unfolded elsewhere, leading to excesses against the lives and property of ethnic Germans.[37] In a number of cities, such as Lissa (Leszno) and Gnesen (Gniezno), German agents who had been planted behind the lines fired on Polish soldiers or carried out premeditated raids on army facilities and police stations.[38] Polish soldiers, police, militias, or armed civilians then searched the homes of Germans for weapons, as they did in Bromberg.[39] German suspects were arrested, many were subsequently released, but a number were shot or deported on foot further into the hinterland. In some cases, Polish courts had meted out summary justice, but saboteurs who were caught in possession of weapons were shot on the spot, without trial, by the Polish military.[40] Innocent bystanders also died during attacks against real or suspected saboteurs.[41] A total of four to five thousand people were killed, two hundred and sixty of them in Bromberg.[42]

The "September crimes" provided the pretext for German acts of retaliation, which, in the following months, probably produced tens of thousands of victims – above all Poles, but also Jews. "Bromberg Bloody Sunday" provided the excuse for the arrest and systematic murder of the Polish intelligentsia in West Prussia, beginning in late September 1939.[43] It is difficult to determine the exact number of victims. Wiesław Trzeciakowski believes that 60,000 Poles and Jews were shot in West Prussia between the fall of 1939 and spring 1940, but provides no proof.[44] Daniel Brewing, relying on more recent research, concludes that 20,000 people were shot in the entire country by the police and Wehrmacht during the war against Poland (September 1

37 Chinciński, *Forpoczta Hitlera*; Mathias Niendorf, *Minderheiten an der Grenze: Deutsche und Polen in den Kreisen Flatow (Złotów) und Zempelburg (Sępólno Krajeńskie) 1900-1939* (Wiesbaden, 1997), 366; Tomasz Łaszkiewicz, 'Dywersija niemiecka w Inowrocławiu we wrześniu 1939 roku', in Tomasz Chinciński and Paweł Machcewicz (eds), *Bydgoszcz 3-4 września 1939: Studia i dokumenty* (Warszawa, 2008), 338-52.

38 Only a small proportion of the German minority – approximately seven hundred – participated in diversions and acts of sabotage. See Chinciński, *Forpoczta Hitlera*, 394.

39 Chinciński, 'Niemiecka dywersja na Pomorzu w 1939 roku', 170-204; Łaszkiewicz, 'Dywersija niemiecka w Inowrocławiu we wrześniu 1939 roku', 338-52; Chinciński, *Forpoczta Hitlera*.

40 Jastrzębski, *Der Bromberger Blutsonntag*; Chinciński, *Forpoczta Hitlera*, 208-211; Trzeciakowski, *Śmierć w Bydgoszczy*, 452.

41 Chinciński, 'Niemiecka dywersja w Polsce, część 2', 179.

42 Krzoska, 'Der "Bromberger Blutsonntag" 1939', 240, 246-7.

43 Klaus-Michael Mallmann, Jochen Böhler, and Jürgen Matthäus, *Einsatzgruppen in Polen: Darstellung und Dokumentation* (Darmstadt, 2008), 56-66; Madajczyk, *Die Okkupationspolitik Nazideutschlands*, 187.

44 Trzeciakowski, *Śmierć w Bydgoszczy*, 364.

to October 6, 1939), and that more than 47,000 later fell victim to the Germans in the fall of 1939 as a result of the extermination campaigns against the Polish intelligentsia, of which 30,000 came from the Reichsgau Danzig-West Prussia.[45] In Bromberg alone, units of the Wehrmacht and Einsatzgruppen shot more than one thousand people, all before September 13, 1939.[46]

Furthermore, the "Polish atrocities" were used for propaganda purposes. The first report on the Bromberg incidents appeared in the German press on September 7, 1939. In the coming days and months, the incidents were progressively exaggerated, given that the reports were part of an already long-running propaganda campaign. Beginning in the spring of 1939, reports had appeared in newspapers, especially those in the eastern parts of the German Reich, on attacks against Germans and their property in Poland. Some of these attacks, albeit on a minimal scale, were orchestrated by the SD or German military intelligence (*Abwehr*), but unquestionably, an anti-German mood existed in Poland at the time.[47] In conjunction with preparations for the invasion of Poland, German propaganda became noticeably sharper in tone after August 1939. After September 1939, media coverage began to focus heavily on the murder of members of the German minority, with Bromberg now taking centre stage.[48] Beginning on September 14, 1939, reports on the murder of interned ethnic Germans also began to be published.[49] In the fall of 1939, the reports on the special trials, which made up the most significant part of the coverage dedicated to the "September crimes", were included as part of this campaign. Reports on the trials appeared above all in the newspapers of the eastern regions that had only been recently integrated into the German Reich, especially in the Bromberg newspaper, *Deutsche Rundschau*, and the *Ostdeutscher Beobachter*, but also in the *Litzmannstädter Zeitung*, the *Danziger Vorposten*, and other newspapers. There were altogether hundreds of reports. The media in the Reich reported on these events as well.[50] Among

45 Daniel Brewing, *Im Schatten von Auschwitz: Deutsche Massaker an polnischen Zivilisten 1939-1945* (Darmstadt, 2016), 140, 174.

46 Epstein, *Model Nazi,* 128.

47 Madajczyk, *Die Okkupationspolitik Nazideutschlands*, 9.

48 Jürgen Hagemann, *Die Presselenkung im Dritten Reich* (Bonn, 1970), 280, note 614; Jochen Böhler, *Auftakt zum Vernichtungskrieg: Die Wehrmacht in Polen 1939* (Frankfurt am Main, 2006) 36-41; Walter Hagemann, *Publizistik im Dritten Reich: Ein Beitrag zur Methodik der Massenführung* (Hamburg, 1948), 389-412; Aristotle A. Kallis, *Nazi Propaganda and the Second World War* (Basingstoke-New York, 2005), 96-7.

49 Cezary Eugeniusz Król, *Polska i Polacy w propagandzie narodowego socjalizmu w Niemczech 1919-1945* (Warsaw, 2006), 275.

50 Klaus Marxen, 'Strafjustiz im Nationalsozialismus: Vorschläge für eine Erweiterung der historischen Perspektive', in Bernhard Diestelkamp and Michael Stolleis (eds), *Justizalltag im Dritten Reich* (Frankfurt am Main, 1988), 101-11, 161, note 35; Freia Anders, *Strafjustiz im Sudetengau 1938-1945* (München, 2008), 196.

these were articles devoted to the "Obornik murder trials", which ultimately allow one to trace the themes and methods used by propaganda, as well as the role of the judicial system.

The "Obornik Murder Trial": Coverage of the Trial in the *Ostdeutscher Beobachter*

Coverage of this trial began on the same day that the trial opened with a summary of the investigation put together by the prosecution and criminal police. This report served to prepare readers for coverage that was to follow in the coming days. It describes in broad brush-strokes how the so-called "march of internees" allegedly unfolded, recounting each of the different stages of the march only in general terms, but clearly aiming at reaching the reader at an emotional level. The author claimed to have retraced the route of the march and visited the sites where the crimes had been committed:

> […] [it] is a road of unutterable sorrow that we saw on our journey. In those places where the murdered had been dug up, one still sees the lighter colouring of the earth. In other places, where mindless fire was opened on the Germans, one finds bullet holes. It then begins to weigh again on the mind, how it was even possible in such heat and without drink or food to march so far, while accompanying guards with loaded pistols rode alongside on bicycles or in trucks.[51]

At the same time, the article fundamentally conforms to the propaganda image of "Polish atrocities": innocent, defenceless Germans, who were tortured and killed without reason, are placed in contrast to brutal Poles.

The article published on the following day provided information on the setting and procedure of the trial: because no room in the courthouse was big enough, the trial took place in the great hall used by the Gestapo. Subsequently, the names of the accused were listed, with their cross-examinations taking up nearly two-thirds of the three-columned newspaper article. Most of the focus was placed on two of the defendants: the man in charge of the forced march and his second-in-command. According to the article, both defendants followed the same defence strategy – "which is common with these types of trials" – of denial and dispute, even though this contradicted the statements they made during the preliminary inquiry, that is, before the police.[52] At one point, while one of the two was being incriminated by a fel-

51 'Die Tragödie der Oborniker Verschleppten'.
52 'Der erste Tag im Oborniker Mordprozeß'.

low defendant and thus responded by repeatedly declaring that he was not speaking the truth, he found himself being "vigorously reprimanded" by the senior judge, Dr. Robert Schwab,[53] with the words "you are lying through your teeth."[54]

The motive of the supposedly deceitful Polish defendant that was presented did not only occur in the reporting about the "Obornik Murder Trial": it was not even particularly characteristic of the "September Crimes" alone. It conformed to the typical stereotype: in the press, Polish defendants were

53 Born on September 1, 1898; appointed Gerichtsassessor in Darmstadt on October 22, 1926; Staatsanwalt at Landgericht Offenbach, November 6, 1932 – January 28, 1934; Amtsgerichtsrat at Amtsgericht Offenbach, January 29, 1934 – March 31, 1941, transferred to Posen in January 1941, at the latest; promoted to Landgerichtsdirektor on April 1, 1941; appointed to the administrative staff of the Oberlandesgericht Breslau on January 27, 1945 (to carry out the work of the court); a lawyer and notary in Hessen after the war. Hubert Rottleuthner, *Karrieren und Kontinuitäten deutscher Justizjuristen vor und nach 1945: Mit allen Grund- und Karrieredaten auf beiliegender CD-ROM* [Berlin, 2010], CD-ROM, Case-ID: 25098; *Bundesbeauftragter für die Unterlagen des Staatssicherheitsdienstes der ehemaligen DDR* (further *BStU*), ZA RHE 34/86 DDR Bd. 24, Bl. 021; Anruf MinRat Dr. Wittland, 27.1.1945, *Bundesarchiv* (further *BArch*) R 3001 (alt R 22) 56519; *Die Verfolgung von NS-Verbrechen durch westdeutsche Justizbehörden seit 1945: Datenbank aller Strafverfahren und Inventar der Verfahrensakten*, rev. Andreas Eichmüller and Edith Raim (München, 2007). Due to missing personnel records, evidence of membership in National Socialist organizations or the party cannot be established.
The associate judges in this case were Landgerichtsrat Dr. Johann Hucklenbroich and Landgerichtsrat Heinrich Rasch (born on February 25, 1908 in Neuenkirch (Hannover Province). On June 30, 1933, Rasch began to serve as the Gerichtsassessor in Oberlandsgerichts-Bezirk Celle, and at the Landgericht in Hannover after August 1, 1939. He was a member of the party from November 1, 1933 to May 30, 1935, and once more with the SA after December 1, 1938, eventually as Truppführer and legal advisor; and once more a member of the party after July 1, 1941. He was appointed to Posen in November 1939, where he remained by request after July 1, 1941. A promotion was not tied to this request. He was drafted as a Fahnenjunker-Feldwebel in June 1944 and died on August 16, 1944 in a reserve military hospital in Metz (Personalakte Heinrich Rasch, *BArch* R 3001 (alt R 22) 71544).
Hucklenbroich (born on June 12, 1901 in Immigrath (Prussian Rhein Province); died on April 29, 1972 in Wuppertal); joined the NSDAP on June 1, 1937 and served as the Landgerichtsrat in Wuppertal after May 31, 1938. Sent to Posen on October 30, 1940, and appointed to Oberlandesgerichtsrat on October 1, 1943. Served as Landgerichtsdirektor in Wuppertal after the war. Rottleuthner, *Karrieren und Kontinuitäten,* CD-ROM, Case-ID: 11445; Personalakte Dr. Johann Hucklenbroich, *BArch* R 3001 (alt R22) 61394; Personalakte Dr. Johann Hucklenbroich, in: BA ZC 19954. Hucklenbroich is frequently mentioned in East German publications associated with the "Blutrichter" campaign. In 1968, the "Braunbuch" claimed that he was responsible for 68 death sentences. Norbert Podewin (ed), *Braunbuch: Kriegs- und Naziverbrecher in der Bundesrepublik und in Berlin (West)*, Reprint der Ausgabe von 1968 (3rd edition) (Berlin, ND), 63.

54 'Der erste Tag im Oborniker Mordprozeß'.

customarily presented as "inveterate liars" who would categorically deny their crimes.[55] This was not very different from the anti-Semitic stereotype of "Jewish shiftiness", now projected onto the Poles.[56]

The testimonies of Polish witnesses or defendants were only accepted as truthful when they supported the case for the prosecution. From the vantage point of propaganda, confessions and Polish witnesses for the prosecution were particularly believable because – and this was how they were seen by the courts as well[57] – all Poles would normally band together against the German prosecuting authorities. This principle also surfaced in the article covering the interrogation of the defendants: the reason for the argument between the two defendants was the shooting of an old man, which was admitted by one of the defendants.[58]

The descriptions of the crimes grew more detailed and graphic, when, on the third day of the trial, for the first time, participants of the march appeared as witnesses. Their testimonies, which were in part quoted verbatim, were central to the newspaper's coverage of the trial; in sum, four of the eight articles published by the *Ostdeutscher Beobachter* reported on the testimonies of the German witnesses. Thus, not only did the coverage take on the appearance of greater authenticity, it also more easily stoked up readers' emotions: sympathy for the German witnesses, disgust for the Polish defendants.

For this reason, the newspaper reports frequently latched onto especially dramatic testimonies, such as the claim that the horrible experience had driven some of the internees to madness, or testimonies on the shooting of women.[59] The articles also included less believable passages. For instance, one of the women supposedly still found time for the following last words: "My God, what have I done, they have shot me directly in the chest!"[60] Apparently, such theatrical exaggerations did not moderate the propaganda effect.[61] The reports were largely believed by the Germans. Only isolated court cases

55 'Ein Todesurteil des Sondergerichts: Noch einmal die schweren Mißhandlungen in Stenschewo', *Ostdeutscher Beobachter*, (February 23, 1940), 5; 'Doppel-Todesurteil gegen Untermenschen: Marodeur der Septembertage trifft das verdiente Schicksal! Posener Sondergericht verhandelt', *Ostdeutscher Beobachter*, (March 1, 1940), 5.

56 Ulrich Herbert, *Fremdarbeiter: Politik und Praxis des "Ausländer-Einsatzes" in der Kriegswirtschaft des Dritten Reiches* (Bonn, 1999), 85-6.

57 In one case, the special court in Posen decided against summoning a witness for the defence who was requested by the defendant because this witness "would only attempt to cover for the defendant" ('Judgement of the Special Court I in Posen', 16 June 1943, *BStU* MfS, HA IX/11, RHE 34/86 DDR, vol. 6, 61-6).

58 'Der erste Tag im Oborniker Mordprozeß'.

59 '"Jetzt habe ich dir polnische Kultur beigebracht"'.

60 Ibid.

61 Becker, *Justiz und Propaganda*, 33-4.

regarding *"Heimtücke"* are documented, in which the defendants had voiced doubts about the reports on events that occurred during the fall of 1939.[62]

The high point of the account of the supposed "atrocities" appeared on August 31, as the newspaper reported that children were among those found in a mass grave.[63] There was an even more dramatic testimony of a German witness which was also reproduced in that same article. The man testified that he had read about his brother's murder in the *Posener Tagblatt* and had set out in search of the body. His brother had been whipped and shot seven times by two Polish policemen. Then one of the policemen hit the dying man in the back of the head with the sharp end of a spade, nearly clipping off the top of his skull. During the autopsy, further injuries were discovered, including bayonet stab wounds.[64] That an autopsy was even performed is doubtful, given that apparently no forensic report was presented to the court: the act of indictment, which listed the evidence to be presented, only specified witness testimonies.[65] It is interesting that this testimony was based on hearsay, given that the witness took what he read in a newspaper – the *Posener Tagblatt* – and used that information to reconstruct how the event had unfolded. His testimony was then probably reproduced in the *Ostdeutscher Beobachter* because of its particularly lurid description of the attendant brutality, but it was also included in the court's judgment.[66]

What is more, the article relied further on other anti-Polish clichés: acts of pillage and plunder were referred to, to illustrate the ostensible tendency of Poles towards criminality.[67] In the "Obornik Murder Trial", it was even pointed out that "marauding Polish soldiers […] had robbed the murdered ethnic Germans",[68] in other words, they could not even restrain themselves from plundering corpses, which suggested a particular break with the conduct of civilized people.

This fits into the clichéd image of the supposedly uncivilized Poles that the article assumed as given, though in this case, the stereotype was embellished with a depiction of "Polish cruelty": when a German asked the leader of the policemen escorting the prisoners what had become of Polish culture, the leader responded by tossing a hand grenade at him and shouting: "Now

62 Weckbecker, *Zwischen Freispruch und Todesstrafe*, 590.
63 'Erstes Geständnis im Obornicker Mordprozeß'.
64 Ibid.
65 'Charge of the Oberstaatsanwalt at the Special Court in Posen, 11 June 1941, *IZ* Dok. I-490.
66 'Judgment of the Special Court I in Posen', 16 June 1943, *IZ* Dok. I-490.
67 'Vier Todesurteile in Hohensalza: Gemeine Verbrechen in den Septembertagen fanden ihre Sühne', *Ostdeutscher Beobachter*, (February 22, 1940), 2.
68 '"Jetzt habe ich dir polnische Kultur beigebracht"'.

I have taught you Polish culture."[69] This story is also not particularly believable: why should a person throw a hand grenade at someone standing directly in front of him? In the verdict, this story was told differently: it was not the head of the police escort who had been approached by the German, but a different policeman, the distance between the two being considerably greater, and the hand grenade "seriously wounded countless other Germans".[70]

Because it lasted for several days, the "Obornik Murder Trial" also offered journalists the opportunity to dig deeper into the case, when usually court reports only included whatever background information was necessary for recounting the tale of an alleged atrocity. The *Ostdeutscher Beobachter* devoted two entire articles to the outcome – one to the prosecution's summing up and one to the court's verdict.[71] But then, in these reports too, the focus always returned to the content of the case, for instance, when State Attorney Walther Kayser,[72] the lead prosecutor, summed up the testimony of witnesses, or when the senior presiding judge pronouncing the sentences invoked "the memory of the incidents of the first Obornik march of internees".[73]

The Role of the Legal System

To give the impression of a fair trial, mention was made of the summoned defence witnesses, whose statements led to the release of two of the accused,[74] and the closing statements for the defence were also reported.[75] Nonetheless,

69 Ibid.

70 'Judgement of the Special Court I in Posen', 16 June 1943, *IZ* Dok. I-490.

71 'Zwei 807-fache Todesstrafen beantragt'; '18 Todesurteile für tausendfache Schuld'.

72 Born on January 31, 1907 in Heideken (Posen Province), died on February 24, 1971 in Palma / Mallorca; attended law school in Göttingen and Munich; Gerichtsassessor in Celle from January 1935 to May 31, 1939, then, until the end of 1940, Staatsanwalt at Landgericht Braunschweig; thereafter, most likely transferred to Landgericht Posen, where he joined the Waffen-SS on March 2, 1943 (17 Panzer-Grenadier Division), and was assigned to the Hauptamt SS-Gericht from April 20, 1944 to January 30, 1945. Kayser joined the SS on April 1, 1933, and joined the NSDAP on May 1, 1935. (Personalakte Wolfgang Kayser, *BArch* [ehem. BDC] PK, Kayser, Wolfgang, geb. 31. 1. 1907; Personalakte Wolfgang Kayser, *BArch* [ehem. BDC] SSO, Kayser, Wolfgang, geb. 31. 1. 1907; Personalakte Wolfgang Kayser, *BArch* [ehem. BDC] RS, Kayser, Wolfgang, geb. 31. 1. 1907; Rottleuthner, *Karrieren und Kontinuitäten*, CD-ROM, Case-ID: 12575).

73 '18 Todesurteile für tausendfache Schuld'.

74 'Der erste Tag im Oborniker Mordprozeß'; 'Erstes Geständnis im Oborniker Mordprozeß'.

75 'Mit Kolben, Bajonetten und Gummiknüppeln'; 'Zwei 807-fache Todesstrafen beantragt'; '18 Todesurteile für tausendfache Schuld'. Also see: 'Erschütternde Erinnerungen an den Bromberger Blutsonntag: Die Sühne für die viehischen polnischen

the role of lawyers was ambiguous: some of them really tried to ensure a fair trial and claimed mitigating circumstances for their clients, but in the case of the two primary defendants, the legal counsel determined that "the defence […] could not advocate [for the defendants], because the extent of their guilt was gigantic."[76] The behaviour was similar in Bromberg, where some of the defence lawyers agreed with the prosecution's imposition of the death penalty.[77]

Just as they had done in regard of the other "September crimes", the press reports on the "Obornik murder trial" also treated it in terms of an allegedly fair trial, as though it was a tribunal dedicated to "justice, and the triumph of justice alone and to atonement for a crime".[78] This motif of quasi-legality was to appear now and again in reports other than merely on legal proceedings; for example, Gauleiter Arthur Greiser declared before foreign journalists that various German measures, in other words, not just courts, were guided by justice and not by the "spirit of vengeance" called forth by "Polish atrocities".[79] At the same time, the thoroughness of the investigation and the gathering of evidence was praised, since it provided the basis for the final verdict. In an editorial written by a certain Arthur Reiss, who, despite the verdict, exhibited reservations about the innocence of ten defendants who had been acquitted, also declared that "German justice has now spoken. In a meticulous trial, as is only common in German courts, eighteen of the twenty-eight accused were found guilty. […] The remaining accused, whose guilt could not be clearly established, were set free."[80] Coverage devoted to the legal process as well as reports on acquittals or – in other trials – prison sentences served as an opportunity to emphasize the supposed objectivity of the courts that dealt with the "September Crimes". This imputed objectivity lent a high degree of credibility to the courts' decisions and was, therefore especially important for propaganda purposes.

Mordtaten – Eine Bilanz der Gerechtigkeit – Querschnitt durch die Tätigkeit der Bromberger Sondergerichte', clipping from the *Danziger Vorposten*, 20. Feb. 1940, *BArch* R 3001, Sign. Film 22917.

76 'Zwei 807-fache Todesstrafen beantragt'.

77 For more on the role of the defence lawyer in the "September crimes", see Edmund Zarzycki, 'Advokaci niemieccy jako obrońcy Polaków przed hitlerowskim Sądem Specjalnym w Bydgoszczy', *Palestra,* 5-6 (1975), 59-75.

78 '18 Todesurteile für tausendfache Schuld'. Also see: 'Keine deutsche Racheaktion in Polen: Gauleiter Greiser über den Aufbau im Wartheland', clipping from the *Deutsche Allgemeine Zeitung*, (May 1, 1940), *BArch* R 3001, Sign. Film 22917.

79 'Keine deutsche Racheaktion in Polen: Gauleiter Greiser über den Aufbau im Wartheland', clipping from the *Deutsche Allgemeine Zeitung*, (Mai 1, 1940), BArch R 3001, Sign. Film 22917.

80 Reiss, *Marsch*.

The judiciary in particular contributed to the exploitation of the trial for propaganda purposes. Even though the bill of indictment had been written in June 1941, the court was set to begin at the end of August 1941. This made it possible to set the date of the sentencing for September 4, the second anniversary of the "Bromberg Bloody Sunday" and the beginning of the "march of the Obornik internees".[81] In this way, the sentencing served a double purpose, as a judicial function and as a memorial service, during which the senior judge not only commemorated the incidents in Bydgoszcz and other "September Crimes", comparing them with the "march of the Obornik internees", but also called on the court to remember the dead. At the end of this session, the senior judge stood in tribute to the dead, while one of the lawyers read out the names of the 133 victims of the march.[82]

In general, it was said that the delivered verdicts were just and fitted the crimes as the law demanded. This also explains why the particulars of the crime were repeatedly mentioned.[83] The legal system naturally placed a high value on rendering a just verdict, which is why this theme appeared again on September 19, 1941 in media correspondence from the judicial press office, when it was made known that the death sentences had been carried out. In addition, the monstrousness of the supposed "atrocities" was once more emphasized:

> "Atonement for the March of the Obornik Internees
> The Attorney General of the Reichsgau Wartheland has informed us that the special court in Posen, after several days of proceedings against the police officers who had escorted the march of the Obornik internees, has carried out the death sentences. Therewith, a just atonement has been made for the crimes which have until now, in this modern legal age, been unknown."[84]

81 The events that were designated by propaganda as the "Bromberg Bloody Sunday" occurred on Sunday, March 3, and Monday, March 4, 1939. It cannot be verified that the adoption of the regulation calling the special courts into existence one day later was related to these events. Nonetheless, the court in Bromberg was the first special court established in occupied Poland.

82 '18 Todesurteile für tausendfache Schuld'. For more on the commemoration of the dead under National Socialism in general, see Sabine Behrenbeck, *Der Kult um die toten Helden: Nationalsozialistische Mythen, Riten und Symbole 1923 bis 1945* (Vierow near Greifswald, 1996).

83 See, for example, '"Jetzt mußt du dein eigenes Grab schaufeln …!" Schwere Ausschreitungen polnischer Soldateska im Kreis Kolmar mit dem Tode gesühnt', *Ostdeutscher Beobachter*, (July 17, 1940), 5; 'Neue Einzelheiten vom Blutsonntag enthüllen die Verhandlungen des Sondergerichts', clipping from the *Deutsche Rundschau*, (November 15, 1939), *BArch* R 3001 Sign. Film 22918.

84 'Die Todesurteile vollstreckt'.

Conclusion

The "Obornik Murder Trial" was only one of hundreds of such episodes where, between 1939 and 1944, German special courts, in the newly incorporated eastern regions of the Reich, adjudicated on cases concerning the so-called "September Crimes". The majority of these trials occurred between the fall of 1939 and the end of 1940.[85] The trial in Posen was therefore conducted relatively late. This is also true for at least two further large trials that concerned the forced evacuation of internees: on December 4, 1941, a group of eight Poles were brought before the special court in Posen, and on June 4, 1942, the special court in Bromberg passed judgment on thirty-eight defendants in the so-called "Thorn Death March" trial.[86] However, none of these trials generated as much propaganda attention as the "Obornik Murder Trial".

The newspaper articles were part of a centrally directed anti-Polish propaganda campaign. Short reports covering the criminal proceedings were the most common, in which the National Socialist press described the "atrocities". Journalistic reports on the "atrocities", witness testimonies, forensic reports and literary commentaries were also published.[87] It was not only during the time of the trial that the "march of the Obornik internees" was the popular subject of media attention and an object of propaganda. Already on July 15, 1940, the *Ostdeutscher Beobachter* published a front-page report on the memorial service in the Obornik market square for one hundred and ten alleged victims of the march. The service was orchestrated by the National Socialists; the *Ostdeutscher Beobachter* reported nothing on the participation of a priest. The square was lined with Nazi flags and columns of organizations and affiliated associations of the NSDAP. Kreisleiter Schnitzer

85 Holger Schlüter: *"… für die Menschlichkeit im Strafmaß bekannt …". Das Sondergericht Litzmannstadt und sein Vorsitzender Richter*, s. l., s. a., 94.

86 Correspondence with the Reichspropagandaamt in Posen, 20 Nov. 1941, *Archiwum Państwowe w Poznaniu*, 86/22; Strafsache des Sondergerichts Bromberg, 4 June 1942, *BStU*, MfS HA IX/11 RHE-West 348/3; for more on the Bromberg case, see Włodzimierz Jastrzebski, *Terror i zbrodnia: Eksterminacja ludności polskiej i żydowskiej w rejencji bydgoskiej w latach 1939-1945* (Warszawa, 1974), 249-50.

87 Such as Bernd Wehner, *Die polnischen Greueltaten: Kriminalpolizeiliche Ermittlungsergebnisse* (Berlin, 1942); Gerhart Panning, 'Der Bromberger Blutsonntag: Ein gerichtsärztlicher Bericht', *Deutsche Zeitschrift für die gesamte gerichtliche Medizin*, 34 (1940), 7-54; Wilhelm Hallermann, 'Die Todesopfer der Volksdeutschen aus den Geiselzügen im Warthegau', *Deutsche Zeitschrift für die gesamte gerichtliche Medizin*, 34 (1940), 54-90; Bernd Wehner, 'Kriminalistische Ergebnisse bei der Aufklärung polnischer Greuel an Volksdeutschen', *Deutsche Zeitschrift für die gesamte gerichtliche Medizin*, 34 (1940), 90-110; Schadewaldt, *Die polnischen Greueltaten*; Edwin Erich Dwinger, *Der Tod in Polen: Die volksdeutsche Passion* (Jena, 1940).

made a speech commemorating German "martyrdom" after 1918 and the "war of eradication" *(Ausrottungskampf)* waged by the Polish state against the German minority, while placing particular emphasis on the "destructive rage" of the "Polish *Blutknechte*" following the initiation of the war, which resulted in the death of "thousands upon thousands" of German victims. The dead were bid farewell with military honours: not only were flags laid on the coffins, a guard of honour also fired in salute. Musical accompaniment was provided by a Wehrmacht band, which played a funeral march at the beginning of the ceremony. Bringing the ceremony to a close, the song "Ich hatt' einen Kameraden" was sung, a ritual taken directly from the ceremony of a military burial. Finally, the coffins were then transported to the home towns of the deceased.[88]

The purpose of the propaganda was to justify the German occupation and their discriminatory, anti-Polish policies, such as the segregation of Polish and German people in the Reich's eastern regions.[89] Indeed, the military administration banned Polish political parties, and closed Polish newspapers and libraries. Poles had to salute Germans in uniform and step off the pavement to let them pass. In some places, the first cars of city trams were reserved for Germans. Parks, inns, cinemas, theatres, museums, and libraries were closed to Poles, and this was advertised by way of publicly displayed printed announcements. Poles were subjected to marriage restrictions, and discriminated against in shops and with food rations. There were different shopping hours for Germans and Poles. Polish residents were herded into neighbourhoods with worse living standards. They received worse health care. Poles were also discriminated against in the workplace. They received lower pay than Germans, and, in addition, had to pay a special levy.[90] In this way, a culture of inequality was constructed that not only entrenched itself in the consciousness of the people, but also served as the basis for the entire German occupation policy. The "Obornik Murder Trial" also served as a means for legitimizing these policies, which were most radically imple-

88 '110 ermordete Volksdeutsche beigesetzt: Eindrucksvolle Trauerfeier für die Toten des Oborniker Zuges', *Ostdeutscher Beobachter*, (July 15, 1940), 1.

89 A. d. P. [Aus der Pressekonferenz], 24 Oct. 1939, quoted in Hagemann, *Die Presselenkung,* 271, note 517.

90 Dariusz Matelski, 'Polityka germanizacji Kraju Warty 1939-1944', in Hubert Orłowski and Andrzej Sakson (eds), *Utracona ojczyzna: Przymusowe wysiedlenia, deportacje i przesiedlenia jako wspólne doświadczenie* (Poznań, 1996), 129-42; Jerzy Marczewski, 'Hitlerowska polityka narodowościowa na terenie okręgu Warty 1939-1945', in Włodzimierz Jastrzębski (ed), *Przymus germanizacyjny na ziemiach polskich wcielonych do Rzeszy niemieckej w latach 1939-1945: Materiały z konferencji* (Bydgoszcz, 1993), 59-81; Karol Jonca, 'Nationalsozialistisches Recht im besetzten Polen (1939-1945)', *Polnische Weststudien*, 3/2 (1984), 239-62.

mented in Warthegau. On September 15, 1941, Kurt Schmalz, the deputy Gauleiter for Warthegau, delivered a speech to the German personnel of the Posen city authorities, in which he detailed his own impressions "of the trial on the march of Obornik internees, which he used as a means for explaining our remorseless attitude. It revealed with striking conviction the terms and conditions of our *Volkstumskampf* in this Gau."[91]

In order to form a negative image of Poland, propaganda relied on a ceaseless repetition of "atrocity reports" – in the case of the Posen trial, the reports on various eyewitness testimonies – and a mixture of truth and fiction which could only be differentiated with some difficulty, as in the Obornik case.

Beginning in the fall of 1939, propaganda was also increasingly racialized. Therefore, the *Ostdeutscher Beobachter* characterized the appearance of one of the accused as having the "typical face of an *Untermensch*,"[92] and reported that in delivering the sentence, the senior judge had explained "why we are making such a fuss over such Polish *Untermenschen*".[93] The propaganda relied above all on the effectiveness of anti-Polish clichés. The probity of reports and the putative judicial objectivity were, in fact, subordinated to the exigencies of propaganda. This explains why less-compelling scenes were described, or why it was reported that a leading judge said to one of the defendants: "You are lying through your teeth!" All the same, attentive readers of the *Ostdeutscher Beobachter* could see that the number of victims mentioned in the "Obornik Murder Trial" changed: sometimes the press spoke of 135 dead and 54 missing, and sometimes it was 133 dead and 49 missing.[94] Admittedly, this was not limited to the press alone: the state prosecutor initially began his arguments relying on the higher figure. During the sentencing, these figures were tacitly scaled down.

Ostensibly, the special court's aim was, as in later classic cases of transitional justice, to clear up and punish crimes committed by representatives of the previous regime, in accordance with the mores of the time, to "make atonement". Indeed, one of the purposes of the trials regarding the "September Crimes" was to demonstrate that the "atrocities were linked to official orders".[95] In the "Obornik Murder Trial", the Polish state officials made to stand trial as defendants were without exception former police officers and

91 'Forderungen des Oborniker Mordprozesses: Stellvertretender Gauleiter Schmalz an die Gefolgschaft der Posener Stadtverwaltung', *Ostdeutscher Beobachter*, (September 16, 1941), 4.

92 'Der erste Tag im Oborniker Mordprozeß'.

93 '18 Todesurteile für tausendfache Schuld'.

94 'Erstes Geständnis im Obornicker Mordprozeß'; '18 Todesurteile für tausendfache Schuld'.

95 Note on the discussion with the leading judge of the special courts established in the former Polish regions dated 24.10.1939, in: *BArch*, R 3001, Sign. Film 22917.

auxiliary police officers. But there was also the testimony of one witness, a motorcycle courier who delivered the order that "as few as possible [of the internees, M. B.] were to remain alive."[96] In this way, the Polish state was to be branded as criminal, its legitimacy called into question, and the occupation justified. At the same time, there was an element of political trial on display: the court put its services at the disposal of anti-Polish propaganda and, to some degree, actively participated in its dissemination, when the victims were honoured with a roll call at the end of the summing up. The final judgment also made reference to the "Bromberg Bloody Sunday" and other "September Crimes", comparing them to the "march of the Obornik internees", and came to the conclusion that "the number of deaths and the enormous number of Germans who were ill-treated and tormented during this march greatly [exceeded] all other forced relocations of this type", and "can only be compared to the Bromberg Bloody Sunday",[97] which served in propaganda as the ultimate symbol of stereotypical "Polish atrocities". The court's written opinion apparently served as the basis for the report in the *Ostdeutscher Beobachter* on the day that the trial ended; it is possible that the article's author was a judge, possibly the same one who issued the sentence.

The severe sentences that were handed down by the court were meant to send a signal to the German people living in the newly absorbed eastern regions of the German Reich, that the justice system had taken action against Poles who had committed crimes against Germans. This was not just true of the "Obornik Murder Trial", but also the cases in other courts that fell under the category of "September Crimes". In Bromberg in particular, the special court's decision in this case resembled the verdict of "blood justice" (*Blutjustiz*): of the five hundred and fifty-seven defendants, the judges sentenced two hundred and twenty-five to death, the majority on flimsy evidence.[98] Death sentences were even given to a defendant who verifiably had not participated in the act, but had merely signalled his approval of measures taken against members of the German minority. The conduct of the special court in Litzmannstadt was not as draconian, but even here, of the two hundred and fifty-three defendants, twenty-three were sentenced to death.[99] For the special court in Posen, whose records have been largely lost, no figures are available. However, in those trials pertaining to the "September Crimes" for which records are available, the usual sentence was death. Considering the

96 Urteil des Sondergerichts I in Posen (wie Anm. 21), 19.
97 Ibid., 5.
98 Weckbecker, *Zwischen Freispruch und Todesstrafe*, 451.
99 Schlüter, *"… für die Menschlichkeit im Strafmaß bekannt …"*, 94.

radically anti-Polish attitude of many of the judges and prosecutors,[100] revenge seems to have motivated these decisions.

In the 1970s, West German prosecutors opened several preliminary proceedings against the three "Obornik Murder Trial" judges and State Attorney Kayser, for their involvement in the special court in Posen and with the state attorney's office there. No trial ever took place though; State Attorney Kayser and both of the associate judges Hucklenbroich and Rasch were already dead, and the case against the presiding judge Schwab, which had already begun in the 1960s, was adjourned and never resumed.[101]

100 Becker, *Mitstreiter im Volkstumskampf,* 80-2.

101 *Die Verfolgung von NS-Verbrechen durch westdeutsche Justizbehörden seit 1945: Datenbank*.

Jarosław Rabiński

Score Settling: The "French Chapter" of Polish Politics in Exile during World War II

The course of military and political events in September 1939 led to a sea change in Poland's leadership. Facing internment by the Romanians, top government posts – president, prime minister, ministers, parliamentary deputies, top civil servants, the commander-in-chief and the military top brass as such – were all transferred to people who managed to escape the invading Germans and Soviets, and find sanctuary in France, ostensibly for the duration of the war.[1] What was of the utmost significance was that in this transfer of authority, power was intercepted by miscellaneous representatives of the pre-war opposition, not necessarily the most eminent oppositionists, only those who happened to make it to France. If up to September 1939, they were all seething at being consigned to political oblivion after the May coup of 1926, and especially so in the 1930s, they were now seething for revenge when this unexpected opportunity of a comeback arose. These erstwhile oppositionists were a mixed bag brandishing prescriptions for very diverse ideological panaceas, but what united them in a super-glued bond was their determination to consign the pre-war regime's luminaries to eternal perdition.

1 There is rich subject literature on the internment in Romania of Poland's civil and military authorities – see e. g.: Anna Cienciała, 'Jak doszło do internowania Rządu R. P. w Rumunii we wrześniu 1939', *Niepodległość*, 22 (1989), 18-65; Eugeniusz Duraczyński, *Rząd polski na uchodźstwie 1939-1945: Organizacja, personalia, polityka* (Warsaw, 1993), 22-30; Tadeusz Wyrwa, 'Odbudowa władz Rzeczypospolitej w Paryżu i w Angers' (wrzesień 1939-czerwiec 1940)', in Zbigniew Błażyński (ed), *Władze RP na obczyźnie podczas II wojny światowej 1939-1945* (London, 1994), 8-11; Mirosław Dymarski, *Stosunki wewnętrzne wśród polskiego wychodźstwa politycznego i wojskowego we Francji i w Wielkiej Brytanii 1939-1945* (Wrocław, 1999), 24-9; Paweł Duber, 'Okoliczności internowania władz polskich we wrześniu 1939 roku', *Arcana*, 103-4 (2012), 187-93.

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The new symbol of this *revanchist* group was to be Gen. Władysław Eugeniusz Sikorski, who took the posts of prime minister and commander-in-chief.[2] Sikorski was the anointed *interrex* if only because, in 1936, he formed an alliance with other malcontents, which was to take the name of "Front Morges", Morges being the Swiss place of residence of the virtuoso and one-time prime minister Ignacy Paderewski who, too, was in opposition to the pre-war regime.[3] However, the common and simplistic view that Pilsudski's clique governing Poland before September 1939, the Sanacja regime, was removed from power altogether, is not true. Notwithstanding any divisions in this camp,[4] the highest office of state – that of president – was taken by Władysław Raczkiewicz, a leading and active Sanacja politician (the provincial governor of Pomerania up to September 1939 and previously the Marshal of the Senate – i. e. the Upper House of the Polish Parliament).[5] That was not

2 Władyslaw Eugeniusz Sikorski (1881-1943) – lieutenant general, politician, engineer. Co-founder of the Union for Active Struggle, a leading activist of the Commission (Provisional) of the Confederated Independence Parties. During World War I, the head of the Military Department of the Supreme National Committee, then (after 1917), the head of the National Enlistment Inspectorate. Participant of Polish-Ukrainian struggles in Eastern Galicia (commander of the Polesie Group and the 9th Infantry Division) and in the Polish-Soviet war (Commander of the 5th Army, then the 3rd Army). 1921-22 – head of the General Staff of the Polish Army. 16 December 1922 – 26 May 1923 – Prime Minister and Minister of Internal Affairs. 1923-1924 – General Inspector of Infantry, 1924-1925 – Minister of Military Affairs, 1925-1928 Commander of the Corps District no. 6 in Lviv. From 1928 – without military allocation. In September 1939, after several unsuccessful attempts to get an allocation, he went to France where he took over as Prime Minister of the Polish government (30 September 1939) and commander-in-chief (7 November 1939); he held these posts until his death in a plane crash in Gibraltar on July 4, 1943 – Marian Kukiel, *Generał Sikorski: Żołnierz i mąż stanu Polski Walczącej* (London, n. d.); *Generał Władysław Sikorski: Żołnierz i polityk* (Warsaw 1981); Roman Wapiński, *Władysław Sikorski* (Warsaw, 1982); idem, 'Sikorski Władysław Eugeniusz', in *Polski Słownik Biograficzny*, 37/154 (Warsaw-Cracow, 1997), 468-78; Olgierd Terlecki, *Generał Sikorski*, 1-2 (Kraków, 1986); Walentyna Korpalska, *Władysław Eugeniusz Sikorski: Biografia polityczna* (Wrocław-Warszawa-Kraków-Gdańsk-Łódź, 1988); Piotr Żaroń, *Generał Władysław Sikorski: Żołnierz, mąż stanu, Naczelny Wódz 1939-1943* (Toruń, 2003); *Generał Władysław Sikorski: Szkice historyczne w 60. rocznicę śmierci* (Toruń, 2004); Henryk Hermann (ed), *Generał Władysław Sikorski – jako dowódca i polityk europejski* (Siedlce, 2004).

3 See Henryk Przybylski, *Front Morges* (Toruń, 2007).

4 See Jacek Piotrowski, *Piłsudczycy bez lidera* (Toruń, 2003); Arkadiusz Adamczyk, *Piłsudczycy w izolacji (1939-1954). Studium z dziejów struktur i myśli politycznej* (Bełchatów, 2008).

5 Władysław Raczkiewicz (1885-1947), independence activist, lawyer, politician. 1917-1918 president of the Polish Chief Military Committee ("Naczpol"), and then the Supreme Council of Polish Armed Forces. 1919-1920 Commissioner of the Government of the Republic of Poland in Minsk; 1920-21 delegate of the Polish government by

all, because prominent ministerial posts were occupied by other members of that camp: August Zaleski[6] became Foreign Minister, Adam Koc[7] (albeit short-lived), became Minister of the Treasury, and Gen. Kazimierz Sosnkowski[8] joined the cabinet as minister without portfolio, but with responsibility

the government of the short-lived Republic of Central Lithuania in Vilnius. Minister of Internal Affairs (28 June – 13 November 1921, 14 June 1925 – 5 May 1926, 13 October 1935 – 15 May 1936). 1921-1924 Nowogródek province governor; 1924-25 delegate of the Polish government in Vilnius; 1926-30 Vilnius province governor. 1930-1935 member of the Senate as a member of the Piłsudsaki'ite BBWR (Non-Party Bloc of Cooperation with the Government), serving as Speaker of the Senate. 1935 – Cracow province governor; 1936-39 – Pomeranian province governor and from 1934 also President of the World Association of Poles Abroad ("Światpol"). 30 September 1939 – 6 June 1947 President of the Republic of Poland – *Dzienniki czynności Prezydenta RP Władysława Raczkiewicza 1939-1947*, vol. 1-2, (Wrocław, 2004); Wacław Szyszkowski, 'Raczkiewicz Władysław', in *Polski Słownik Biograficzny*, 29/123 (Wrocław-Warszawa-Kraków-Gdańsk-Łódź, 1986), 607-14; Andrzej Ajnenkiel, Andrzej Drzycimski, and Janina Paradowska, *Prezydenci Polski* (Warsaw, 1991); Marian Marek Drozdowski, *Władysław Raczkiewicz*, vol. 1-2, (Warsaw, 2002).

6 August Zaleski (1883-1972) – politician and diplomat. 1919-21 member of the Lower House and delegate of the government in Athens; 1922-26 – Polish ambassador in Rome. 15 May 1926 – 1 November 1932 Minister of Foreign Affairs. 1928-35 – Senate deputy, BBWR member. After the death of Józef Piłsudski, he favoured compromise with the opposition. In September 1939, he reached France through Romania. He was one of the candidates for the office of successor to President I. Mościcki after his internment in Romania. Two-time candidate for the office of Prime Minister recommended by President Władysław Raczkiewicz (September 1939, 18-19 July 1940). 30 September 1939 – 22 August 1941, Minister of Foreign Affairs. Critical of the provisions of the Sikorski-Maysky agreement. 1941-47, head of the civil office of President W. Raczkiewicz. 9 June 1947 – 7 April 1972 President of the Republic of Poland in exile. He did not resign after a 7-year term as protocol demanded, which caused a serious political crisis in exile: Ajnenkiel, Drzycimski and Paradowska, *Prezydenci Polski*; Piotr Wandycz, *Z Piłsudskim i Sikorskim: August Zaleski minister spraw zagranicznych w latach 1926-1932 i 1939-1941* (Warsaw, 1999).

7 Adam Ignacy Koc (1891-1969) – independence activist, soldier, politician. Member of the Union of Active Struggle and Rifle Association. During World War I in the Polish Legions and the Polish Military Organization (commander of the Supreme Headquarters no. 1). 1926-1928 – chief of staff of the Command of Corps District no. 6 in Lviv. 1928-36 – Lower House deputy on behalf of the BBWR; 1938-39 – Senate member on behalf of the Camp of National Unity (OZON) and president of the Bank of Poland. From 1936 'supreme commander' of the Legionaries' Union. 1937-38 – founder and head of OZON. 11 September 1939 appointed Vice Minister of the Treasury with the task of moving the gold of the Bank of Poland abroad. 30 September – 9 December 1939 Minister of the Treasury; 9 October – 9 December 1939 – Minister of Industry and Trade; 1939-40 – Vice Minister of the Treasury and also Industry and Trade. From 1940 in the USA. Adam Koc, *Wspomnienia*, ed. Janusz Mierzwa (Wrocław, 2005); Janusz Mierzwa, *Płk. A. Koc. Biografia polityczna* (Cracow, 2006).

8 Kazimierz Sosnkowski (1885-1969) – independence activist, soldier. Co-founder of the Union of Active Combat and Rifle Association. During World War I in the Polish

for supervising the dynamically growing underground resistance movement back home. Therefore, it cannot be said that Piłsudski's acolytes were completely marginalized, with no influence whatsoever on the direction of the new government's home and foreign policies. However, it must be added that though both Zaleski and Sosnkowski were Piłsudski'ites, they hovered on the fringes of political life throughout the 1930s.

From its very inception, Sikorski defined his cabinet as the Government of National Unity. He thereby sought to emphasise that the central authorities represented the whole of society, or at least its vast majority, with due regard to pre-war political preferences. This seemed to be the only sensible solution in face of military defeat and its ensuing consequences (which would invariably influence the international position of the new Polish authorities). The initial aims were straightforward: the recovery of national territory, the expulsion of the invader-occupiers, the improvement of the situation of the Polish population under the German and Soviet occupations. The slogan "Government of National Unity" was meant to suggest governance that was

Legions: 1914-1916 – chief of staff of the 1st Brigade, 1916 commander of the 1st Brigade, member of the Council of Colonels. 1917-18 – interned in Magdeburg, Germany. After regaining independence: 1918-1919 – commander of the General District Warsaw, 1919-1920 – Deputy Minister of Military Affairs, 1920 – commander of the Army Reserve, 10 August 1920 – 26 May 1923 – head of the ministry, and then Minister of Military Affairs, 1923 – inspector of Army no. 3 in Toruń, 19 December 1923 – 17 February 1924 – Minister of Military Affairs, 1924-1925 – general inspector of infantry, 1925-1926 – commander of the Corps District no. 7 in Poznań, 1927-1939 – Army inspector. During that time, he was successively promoted to brigadier general (21 November 1918), major general (1 June 1919) and lieutenant general (10 November 1936). In September 1939 he took command of the Southern Front. In October 1939 he reached France via Hungary. 16 October 1940 – 1 August 1944 – the nominated successor of the Polish President; 13 November 1939 – July 1941 – commander-in-chief of the Union of Armed Combat; 1939-42 member of the Committee for State Affairs (1939-41 chairman), 1940-41 – member of the Political Committee of Ministers. At the same time 16 October 1939 – 22 August 1941 – Minister without portfolio in the cabinets of W. Sikorski. 8 July 1943-30 September 1944 – commander-in-chief. From November 1944 he lived in Canada – Kazimierz Sosnkowski, *Cieniom Września* (Warsaw, 1989); Kazimierz Sosnkowski, *Historical Materials*, ed. Józef Matecki (New York-London, 1966); Kazimierz Sosnkowski, *Wybór pism*, ed. Jerzy Kirszak (Wrocław, 2009); *Kazimierz Sosnkowski myśl – praca – walka: Przyczynki do monografii oraz uzupełnienia do materiałów historycznych Kazimierza Sosnkowskiego,* ed. Stanisław Babiński (London, 1988); Maria Pestkowska, *Kazimierz Sosnkowski*, (Wrocław, 1995); Andrzej A. Zięba, 'Sosnkowski Kazimierz', in *Polski Słownik Biograficzny*, 40/167 (Warsaw-Cracow, 2001), 524-39; *Kazimierz Sosnkowski żołnierz, humanista, mąż stanu w 120 rocznicę urodzin,* ed. Tomasz Głowiński and Jerzy Kirszak (Wrocław, 2005); Ireneusz Wojewódzki, *Kazimierz Sosnkowski podczas II wojny światowej: Książę niezłomny czy Hamlet w mundurze?* (Warsaw, 2009)*;* Jerzy Kirszak, *Generał Kazimierz Sosnkowski 1885-1969* (Warsaw, 2012); Lech Wyszczelski, *Generał Kazimierz Sosnkowski* (Warsaw, 2014).

different to what obtained before September 1939. Before the war, Piłsudski's camp followers held onto power with the help of administrative, police and legal malpractices as and when necessary. They made life difficult for their erstwhile opponents; now their erstwhile opponents were in the driving seat, determined to consolidate their position and promote national unity. Thus, the problem was: how could the slogan of national (and hence political) unity be reconciled with criticism of pre-war dictatorial practices? Sikorski adopted a two-track approach. On the one hand, especially at the beginning of his time in office, he emphasized the need for unity, for postponing retributive justice to the post-war period, and for using any suitable person to achieve the main objectives of war. On the other hand, from the beginning of its exile in France, there were signs that an important feature of this new government would be a reckoning with the past. It was only natural that Sikorski's reliance on former oppositionists made it almost inevitable that the new government's retributive urges would be never too deep below the surface. Thus, Sikorski had to strike a balance between reining in the lust for revenge when objective merit-based criteria came into play, and giving free rein to emotions driven by personal experiences whenever the situation allowed. The desire for revenge was very much in evidence in the controversial activities of Colonel (General as from May 1940) Izydor Modelski; indeed, Modelski's behaviour was and continues to be seen as symptomatic of this revanchist syndrome.[9] Other prominent "inquisitors" included Jan Stańczyk,[10]

9 Izydor Modelski (1888-1962) – politician and soldier. During World War I in the Polish Legions. Opposed to Józef Piłsudski's coup in May 1926. 1928-39 – president of the Association of Gen. Haller's Soldiers. In exile during War World II. 1939 1st Deputy Minister of Military Affairs; 1939-40 2nd Deputy Minister of Military Affairs; 1942-44 – undersecretary of state in the Ministry of Military Affairs/Ministry of National Defense. Brigadier 3 May 1940, Maj.-Gen. 1 March 1946. Returned to Poland in July 1945. 1945-46 head of the Polish Military Mission in London. 1946-48 – military, maritime and aviation attaché to the Polish Embassy in Washington. September 1948 received political asylum from the US government – Waldemar Bujak, '*Modelski Izydor*', in *Polski Słownik Biograficzny*, 21/90 (Wrocław-Warsaw-Cracow-Gdańsk, 1976), 516-19; Edward Balawajder, 'Modelski Izydor', in *Słownik biograficzny katolicyzmu społecznego w Polsce*, vol. 2, (Lublin, 1994), 143-4; Slawomir Łukasiewicz, 'Generała Modelskiego ucieczki i powroty', *Więź,* 1 (2007), 98-110; Jarosław Rabiński, *Stronnictwo Pracy we władzach naczelnych Rzeczypospolitej Polskiej na uchodźstwie w latach 1939-1945* (Lublin, 2012).

10 Jan Stańczyk (1886-1953) – miner, socialist politician, union activist. 1922-30 – member of Sejm. 1933-39 – deputy chairman of the Central Commission of Trade Unions. From 1937 – member of the Central Executive Committee of the Polish Socialist Party. Left Poland in September 1939. 2 October 1939 – November 1944 – served as Minister of Welfare/Labour and Welfare in the governments of Gen. Władysław Sikorski and Stanisław Mikołajczyk. 1939-41 – member of the Committee for State Affairs, 1941-43 the Political Committee of Ministers and the Economic Committee

Karol Popiel[11] and Herman Lieberman.[12]

of Ministers. During World War II served in the Foreign Committee of PPS (Polish Socialist Party) and was chairman of the Foreign Representation of Polish Trade Unions. On behalf of the Polish government, became a member of the Administrative Council of the International Labor Organization. In June 1945 he participated in the Moscow talks on the establishment of the Provisional Government of National Unity. 27 June he returned to the country and took over as the Minister of Labour and Welfare, and joined the National Council and the Polish delegation to the Potsdam conference. Participated in the first session of the UN in London in January 1946. In December 1948, he took part in the Congress of Unification of PPS and PPR (Polish Workers' Party), then became a member of the Communist Party – Jan Walczak, 'Jan Stańczyk', in *Polski Słownik Biograficzny*, 42/173 (Warsaw-Cracow, 2003), 244-50; Magdalena Hułas*, Goście czy intruzi? Rząd polski na uchodźstwie wrzesień 1939 – lipiec 1943* (Warsaw, 1996), 143-8.

11 Karol Popiel (1887-1977) – independence activist, politician. 1920-1937 leading activist of the National Workers' Party, and in 1923 and from 1929-1937 president of the Central Executive Committee of NPR. 1922-27 – Lower House deputy. 1930 – arrested and imprisoned in Brest-Litovsk. Supporter of the informal opposition grouping "Front Morges" based in Switzerland. From 1937 – co-founder and leading politician of the Labour Party: 1937-1939 vice-president, 1939-1946 president of ZG SP. During World War II in exile in France and the UK. 1939-41 – undersecretary of state in the Ministry of (Labour and) Welfare; 3 September 1941-14 July 1943 – minister without portfolio; 1941-43 head of at Administrative Office; 1941-42 acting head of the Ministry of Justice; 14 July 1943-24 November 1944 – minister of the Reconstruction of Public Administration; 1940-44 – member of the Committee for State Affairs, 1942-44 – the Political Committee of Ministers, 1942-44 – member of the Economic Committee of Ministers, 1943-44 – member the Committee for Occupation. In July 1945 he returned to Poland, where he undertook legal activities independent of the Communists. 1945-46 – member of KRN. In October 1947, went into exile again; leader of the SP (Labour Party) in exile and the Christian Democratic European and world structures – Karol Popiel, *Generał Sikorski w mojej pamięci*; idem, *Na mogiłach przyjaciół*, (London, 1966); idem, 'Uwagi', in Waldemar Bujak, *Historia Stronnictwa Pracy 1937-1946-1950* (Warsaw, 1988); Teresa Monasterska, 'Popiel Karol', in *Polski Słownik Biograficzny*, 27/114 (Wrocław-Warsaw-Cracow-Gdańsk-Łódź, 1983), 558-62; Henryk Przybylski, 'Popiel Karol', in *Słownik biograficzny katolicyzmu społecznego w Polsce*, vol. 2, (Warsaw, 1994), 200-2; Ryszard Gajewski, *Karol Popiel 1887-1977* (Suwałki, 2008).

12 Herman Lieberman (1869-1941) – lawyer, socialist politician. 1901-1919 – member of the Board of the Polish Social Democratic Party of Galicia and Silesia. 1907-18 – member of the National Council in Vienna on behalf of PPSD. During World War I in the Polish Legions. 1919-1935 – member of Sejm. From 1919 in the Polish Socialist Party, member of the supreme authorities of the party: Supreme Council (1920-1939), vice chairman of the Central Executive Committee (1931-1934), representative of PPS in the Office of the Socialist International (1932-1939), chairman of the Foreign Department of the Central Executive Committee / Foreign Committee (1940-1941). 1930 – imprisoned in Brest-Litovsk; sentenced in 1932 to thirty months in prison, he went to Czechoslovakia 1933 and then to France. During War World II, deputy chairman of the National Council of Poland (23 January 1940-3 September 1941). 3 September-21 October 1941 – Minister of Justice in the government of W.

Two issues should be emphasized when considering the factors that influenced relations between Gen. Sikorski's team and its predecessors. Firstly, Sikorski and his political and military entourage believed they had suffered repressions in pre-war Poland because of their opposition to the Sanacja regime. Harassment had taken many forms, ranging from outright dismissal or release from active duty and being left "at the disposal" of superiors (e. g. Sikorski, Modelski) when it came to army careers, to being removed from academic posts (like Prof. Stanisław Kot,[13] Prof. Stefan Glaser),[14] to imprisonment, abuse

Sikorski – Herman Lieberman, *Pamiętniki*, ed. Andrzej Garlicki (Warsaw, 1996); Artur Leinwand, Poseł Herman Lieberman (Kraków -Wrocław, 1983).

13 Stanisław Kot (1885-1975) – historian, politician. 1920-34 – professor of the Jagiellonian University. From 1921 member of the Polish Academy of Art and Science. 1933 deprived of his chair due to statements opposing the Sanacja regime. In the same year he became involved with the Peasant Party. 1936-39 member of the Supreme Executive Committee of SL (Peasant Party), from 1939 – member of the Foreign Committee SL. From October 1939 – in exile. Friend and trusted co-worker of W. Sikorski. 1939-40 – undersecretary of state in the Presidium of the Council of Ministers; 10 October 1940-28 August 1941 – Minister of Internal Affairs; 28 August-September 1941 – Minister without portfolio; 1941-1942 – Polish ambassador in Moscow, then in Kuibyshev; 1942-43 – delegate of the Polish government in the East; 18 March 1943-24 November 1944 – Minister of Information and Documentation; 1940-41 – member of the Committee for State Affairs (1941 chairman). 1945 – he returned to Poland. 1945-1947 – Polish ambassador in Rome. 1947 again in exile. Since 1955 chairman of the Supreme Council of the Polish Peasant Party in exile – Stanisław Kot, 'Wspomnienia z początkowego okresu II wojny światowej', *Przegląd Polonijny*, 2 (1981), 115-31; Janusz Gmitruk, Zygmunt Hemmerling, and Jan Sałkowski (eds), *Z kraju i na emigracji: Materiały z londyńskiego archiwum ministra prof. Stanisława Kota (1939-1943)* (Warsaw, 1989); Jerzy Juchnowski, Rafał Juchnowski, and Lilla Barbara Paszkiewicz (eds), *Z archiwum politycznego profesora Stanisława Kota: Polska myśl polityczna XX wieku: Materiały źródłowe z komentarzem* (Toruń, 2013); Tadeusz Paweł Rutkowski, *Stanisław Kot 1885-1975: Biografia polityczna* (Warsaw, 2000)*;* idem*, Stanisław Kot 1885-1975: Między nauką a polityką* (Warsaw, 2012); Alina Fitowa (ed), *Stanisław Kot – uczony i polityk* (Cracow, 2001); Grażyna Ofiara, *Profesor Stanisław Kot: Zarys biografii naukowej* (Rzeszów, 2008).

14 Stefan Antoni Glaser (1895-1984) – lawyer. 1920-24 – employee (1923-24 dean of Faculty of Law) of the University of Lublin (later KUL); from 1924 – employee of the Stefan Batory University in Vilnius. For his protest against the Brest trial, he was deprived of his chair and in 1934 moved to retire. Attorney in political trial, inter alia of W. Korfanty, S. Mikołajczyk and W. Tempka. As from 1937 member of the Supreme Council of the Labour Party. In November 1939 – moved to France. 1939-41 – head of the Department of Justice, then director of a department in the Ministry of Justice. From 1940 – chairman of the Appeal Disciplinary Commission by the Presidium of the Council of Ministers. As from 1942 – member of the Legislation Work Committee. From 1941 – Polish representative to the emigre governments of Belgium and Luxembourg. President of the Association of Professors of Allied Forces in the UK. As from 1944 – dean of the Polish Faculty of Law at Oxford University. After the end of War World II, he remained in exile in Belgium. He gave lectures at the universities in Liège, Leuven and Ghent. 1948 – founding member of the

and lawsuits (as was the part of Lieberman and Popiel). In assessing the subsequent attitudes of those who had suffered to those who had oppressed them, it must not be forgotten that their grievances were not imaginary.

The second very important issue was the refusal of exponents of the old regime to recognise the legitimacy of the new government. They accused Sikorski and his followers of staging a *coup d'etat* in connivance with the top French civil-military decision-makers who used their influence to prevent the pre-war elite *en route* for France from leaving Romania, and have them interned there for the duration of the war. This allegation of a Franco-Sikorski government conspiracy remains intact to this day (see, for example, Władysław Pobóg-Malinowski,[15] Leszek Moczulski[16]). This allegation made it all the more important for the Sikorski camp to justify its reasons for reaching for power. This need automatically upgraded the issue of calling their predecessors to account for the defeat of September 1939 to the rank of a priority factor in legitimizing the new team, and justifying the way they acquired power. In this context, the following major factors were stressed:

– the way in which the Sanacja regime maintained an authoritarian grip on society, against the will of the majority, and particularly its failure to close ranks and cooperate with the opposition in face of the coming armed conflict;

– serious mistakes in foreign policy after 1926 (especially in the 1930s), particularly on the eve of war (the occupation of Teschen, which smacked of collaboration with the Third Reich);

– errors in drawing up defence plans and in their implementation;

– the course of the September Campaign of 1939, deficiencies in modern weaponry and infrastructure, and inadequate command structures at both central and tactical levels;

– the inability to use available staff reserves (e. g. the case of Sikorski himself – his pursuit of Marshal Śmigły-Rydz in the hope of obtaining a military allocation);

– the contrast between the jingoistic tub-thumping braggadocio of the pre-war regime and the actual course of the military confrontation in September 1939;

Polish Scientific Society in Exile – Stephan Glaser, *Urywki wspomnień* (London, 1974); Grażyna Karolewicz, 'Glaser Stefan Antoni', in *Encyklopedia katolicka*, vol. 5, (Lublin, 1989), col. 1101-2; Małgorzata Gałązka, 'Stefan Glaser', in *Profesorowie prawa Katolickiego Uniwersytetu Lubelskiego*, ed. Antoni Dębiński, Wojciech Sz. Staszewski, and Monika Wójcik (Lublin, 2006), 81-90.

15 Wladyslaw Pobóg-Malinowski, *Najnowsza historia polityczna Polski, 1864-1945*, vol. 3, part 2, (London, 1960), 69-72.

16 Leszek Moczulski, *Wojna polska*, 869-75.

– the behaviour of the military and civil authorities during the September Campaign with particular emphasis on the escape of the commander-in-chief, Marshal Edward Śmigły-Rydz, to Romania.

For Sikorski and many other military men, including Piłsudski'ites, the commander-in-chief's flight while his army was still fighting the enemy was in flagrant breach of all principle of propriety, an incomprehensible decision sometimes regarded simply as desertion. This, in turn, led to the termination of any sense of duty towards the commander-in-chief (for example, the case of the military attaché in Bucharest, Colonel Tadeusz Zakrzewski[17] and his role in strengthening the position of Sikorski). It is important to recognise that the opposition felt free to make changes after Śmigły-Rydz's breach of trust; indeed, the conduct of many other prominent exponents of the state's highest authorities was regarded as reprehensible to the point of their losing any moral mandate to govern. Settling past scores by the new incoming emergency authorities was set against the above background.

One of the first signs of a wish to break with the past was the issue of approval of the basis for functioning in exile and the rejection of the April Constitution of 1935 which was deemed to be undemocratic. In the delicate situation in which the Polish authorities in France found themselves, emphasizing the legal continuity of the state was of paramount importance. Nevertheless, Sikorski was not short of advisers urging him to revoke the Basic Law of April 1935 as the legal basis for the actions of the Polish government-in-exile. This went so far as to proposing abandoning the symbolic vestiges of government as decreed by the April Constitution, and appointing a Polish Committee in Paris in their place. Karol Popiel argued that the March Constitution of 1921 should be reinstated and constitute the basis of a new regime. Ironically, this resembled the solution of 1944 employed by the Soviet-sponsored communist puppet government called the Polish Committee of National Liberation. It should be remembered that before September 1939, the opposition had criticized both the content and the procedure in passing the April Constitution. Other supporters of rescinding this Constitution included Stanisław Mikołajczyk,[18] Henryk Lieberman and Izydor Modelski.

17 Tadeusz Zakrzewski (1897-1964) – soldier. 1937-40 – military attaché at the Polish Embassy in Bucharest – Robert Majzner, *Attachaty wojskowe Drugiej Rzeczypospolitej 1919-1945: Strukturalno-organizacyjne aspekty funkcjonowania* (Częstochowa, 2011), 525.

18 Stanisław Mikolajczyk (1901-1966) – popular politician, Prime Minister of the Polish government. 1930-35 – Lower House (Sejm) deputy. 1931-1939 – Member of the supreme authorities of the Peasant Party. Organizer of a peasant strike in 1937. Supporter of s. c. Front Morges. He fought as a soldier in September 1939, then interned in Hungary. In November 1939 he moved to France. 1940-41 – deputy chairman of

However, the vast majority of politicians, including Prime Minister Sikorski and Deputy Prime Minister (the real architect of this coalition government) Prof. Stanisław Stroński,[19] dismissed the arguments of the opponents of the April Constitution. Luckily, sobriety prevailed, and the desire to revise past legal and constitutional issues, however negative they may have been deemed to have been, was suppressed. Denial of the April Constitution would have undermined the legal basis for the continued existence of the Polish govern-

the Polish National Council (actually serving as acting chairman). 1941-43 – Minister of Internal Affairs; 1941-43 – Deputy Prime Minister. 14 July 1943-24 November 1944 – Polish Prime Minister. 1940-44 – member of the Committee for State Affairs; from 1940 – member of the Commission for September 1939; from 1941 – member of the Political Committee of Ministers and the Economic Committee of Ministers; from 1942 – member of the Committee of Propaganda of the Council of Ministers. 1945 – returned to Poland. 1945-1947 – member of the National Council; 1947 – member of the Lower House. 1945-1947 – Deputy Prime Minister and Minister of Agriculture and Agrarian Reforms in the Provisional Government of National Unity. 1945-1946 – vice president, 1946-47 – president of the Supreme Executive Committee of the Polish Peasant Party. He remained in opposition to the communist authorities. In October 1947 he illegally left Poland. He settled in the USA, where he served as President of the Polish Peasant Party in exile. 1950 – founder of the Polish National Democratic Committee – Stanisław Mikolajczyk, *Polska zgwałcona* (Poznań, 1990); Janusz Gmitruk and Andrzej Paczkowski (eds), *Diariusz premiera Stanisława Mikołajczyka prowadzony przez Stefanię Liebermanową 13 XII 1944-14 VI 1945* (Warsaw, 2003); Mieczysław Adamczyk and Janusz Gmitruk (eds), *Diariusz Stanisława Mikołajczyka prowadzony przez Marię Hulewiczową* (Kielce, 2002); Andrzej Paczkowski, *Stanisław Mikołajczyk czyli klęska realisty (zarys biografii politycznej)* (Warsaw, 1991); Roman Buczek, *Stanisław Mikołajczyk*, vol. 1-2, (Toronto, 1996); *Stanisław Mikołajczyk w dokumentach aparatu bezpieczeństwa,* vol. 1-3, (Warsaw, 2010).

19 Stanisław Stroński (1882-1955) – Romanist, independence activist, politician, journalist. Member of the Union of Polish Youth ("Zet"), the National Democratic Party and the National League. 1913-14 – member of the National Assembly in Lviv. 1922-1935 – Lower House deputy on behalf of, successively, the Christian-National Party, Popular National Union and National Party. Supporter of Front Morges. Professor of the Jagiellonian University (from 1919) and of the Catholic University of Lublin (1927-39). 1 October 1939 – 17 June 1940 – Deputy Prime Minister; 18 June 1940-10 October 1940 – Minister without portfolio; 10 October 1940-14 March 1943 – Minister of Information and Documentation. Member of the Political Committee of Ministers (1940-43). After War World II he remained in London. Co-founder and member of the Council of the Polish Institute and the General Sikorski Museum in London; co-founder of the Polish Scientific Society in Exile. 1949-1954 – member of the Political Council; 1954-1955 – member of the Provisional Council of National Unity. 1945-48, 1950-54 – president of the Association of Polish Writers in Exile – Stanisław Stroński, *Polityka rządu polskiego na uchodźstwie w latach 1939-1942*, ed. Jacek Piotrowski, vol. 1-3, (Nowy Sącz, 2007); Janusz Faryś, *Stanisław Stroński – biografia polityczna do 1939 roku* (Szczecin, 1990); Wojciech Rojek, 'Stroński Stanisław', in *Polski Słownik Biograficzny*, 44/182 (Warsaw-Kraków, 2006), 381-90.

ment, and would have opened the door to hostile foreign interference in Poland's internal affairs.[20]

While the watchword "national unity" was chanted with the zeal of a man possessed, the process of collecting materials that would enable charging those responsible for "the September defeat" with criminal liability continued relentlessly. The defeat against Germany and the Soviet Union seemed to be a convenient battlefield on which to settle old scores. As convention would have it, the allegations were to be based on substantiated and documented facts, but this did not automatically mean that there were no non-substantive motives lurking in the background. An analysis of the ways in which the institutions established to document the 1939 campaign functioned prompts the conclusion that those directing these inquiries lacked the necessary degree of detachment and were inclined to encumber their predecessors with undivided responsibility for any military or political failures.

Chronologically, the first institution to investigate the recent past was the "Commission for the Registration of Facts and Collecting Documents on Recent Events in Poland" (in short: The Registration Commission). Significantly, it was appointed by resolution of the recently formed (ten day old) cabinet, on 10 October 1939. During the discussion in cabinet, on the scope of responsibility of the committee, the idea of apportioning blame to individuals was abandoned, limiting its work to recording facts and securing materials and documents. The commission was made up of Gen. Józef Haller[21] – chairman (though in his post-war memoirs, he denied partici-

20 See Magdalena Hułas, *Goście czy intruzi*, 16-7; Jarosław Rabiński, *Stronnictwo Pracy*, 128-9.

21 Józef Władysław Haller de Hallenburg (1873-1960) – soldier, politician. During World War I, commander of the Eastern Legion (1914-1916), commander of the 2nd Brigade LP (1916-1918), commander of the 5th Rifle Division (1918), commander of the 2nd Polish Corps (1918), commander of the Polish Army in France (1918-1919). From 1919 – in the Polish Army. Lt. Gen. from 1 June 1919. Participant in the Polish-Soviet war (1919 commander of the Galician Front, commander of the South-Western Front, then the Southern Front, 1919-1920 – commander of the Pomeranian Front, 1920 General Inspector of the Volunteer Army, commander of the North-Eastern Front and Northern Front). 1920-1926 – general inspector of artillery, member of the War Council and chairman of the Supreme Adjudicating Commission. From 1926 retired. 1922-23 – Lower House deputy. 1920-1926 – President of the Central Committee of the Polish Red Cross Society. Patron of the ex-servicemen's organization the Association of Haller's Soldiers. 1936 – co-founder of Front Morges. As from 1937 – president of the Supreme Council of the Labor Party. In September 1939 – without allocation. 14 September 1939 he left Poland, and on 3 October 1939 reached Paris via Romania. 3 October 1939-1 May 1941 – minister without portfolio, 1 May 1941-14 July 1943 – minister, head of the Office of Education and School Affairs. Member of the Political Committee of Ministers (1940-42). After War World II he remained in London – Józef Haller, *Pamiętniki z wyborem dokumentów i zdjęć*

pating in the committee), Ministers Stroński and Aleksander Ładoś,[22] Col. Modelski as Haller's stand-in in Military Affairs, and miscellaneous delegates (Janusz Ligęza-Stamirowski,[23] Alfred Andrzej Marski[24] and a delegate from Ładoś – Stanisław Schimitzek).[25] According to the available materials, just two plenary sessions of the committee were held: on 26 October and 6 December 1939. The fruit of its labours was a file of sixty-seven testimonies (or sixty-eight if we include the testimony of the Governor of Lviv, Alfred Bilyk),[26] on the activities of the various governing authorities before September: the majority concerned the Ministry of Internal Affairs (thirteen testimonies) and the Ministry of Foreign Affairs (fifteen testimonies). Polish diplomatic institutions cooperated with the commission. Its work was cut short due to various factors, not least the long-term departure of some members after the fall of France and the establishment of another commission by the National Council).[27]

The Registration Office, a special unit at the Ministry of Military Affairs, ostensibly under the supervision of the second Deputy Minister of Military

(London, 1964); Stefan Aksamitek, *Generał Józef Haller: Zarys biografii politycznej (*Katowice, 1989)*;* Marek Orłowski, *Generał Józef Haller 1873-1960* (Cracow, 2007).

22 Aleksander Wacław Ładoś (1891-1963) – politician, diplomat. From 1913 – member of the Polish Peasant Party "Piast". From 1919 – in the diplomatic service; 1923-26 – Polish legate in Riga; 1927-1931 – consul general of Poland in Munich. 3 October 1939-9 March 1939 – minister without portfolio in the government of Sikorski, responsible for liaison with the country; 1939 – member of the Committee for State Affairs. 1940-45 – chargé d'affaires in Bern. He returned to Poland in 1960 – Aleksander Ładoś, 'Gabinet umiarkowanie … sanacyjny', in *Tygodnik Demokratyczny*, 43 (1969), 4-5; Stanisław E. Nahlik, 'Aleksander Ładoś', in *Polski Słownik Biograficzny*, 18/77 (Cracow, 1973), 183-6; Jacek Majchrowski (ed), *Kto był kim w Drugiej Rzeczypospolitej* (Warsaw, 1994), 103.

23 Janusz Ligęza-Stamirowski (1891-1952) – soldier.

24 Alfred Andrzej Marski (1892-?) – soldier.

25 Stanisław Schimitzek (1895-1975) – diplomat, lawyer, publicist. From 1920 in diplomatic missions in Prague, Paris, Geneva, and Berlin. 1933-39 – head of the Administrative Department of the Ministry of Foreign Affairs. During War World II, delegate of the Polish government to Lisbon. In 1946 he returned to Poland, where he worked in the Ministry of Industry and Trade, then for the "Wiedza Powszechna" Publishers and the Western Press Agency – Stanisław Schimitzek, *Na krawędzi Europy: Wspomnienia portugalskie 1939-1946* (Warsaw, 1970); Andrzej Essen, 'Schimitzek Stanisław', in *Polski Słownik Biograficzny*, 35/147 (Warsaw-Kraków, 1994), 490-2.

26 Alfred Biłyk (1889-1939) – lawyer, official and soldier. During World War I in the Polish Legions. 1936-37 –Tarnopol province governor; 1937-39 – Lviv province governor.

27 See Schimitzek, *Na krawędzi Europy*, 100; Hułas, *Goście czy intruzi*, 152-3; Andrzej Grzywacz and Marcin Kwiecień, 'Sikorszczycy kontra sanatorzy (ciąg dalszy)', *Zeszyty Historyczne*, 129 (1999), 44-125, 57-71, 123-4; Mieczysław Adamczyk and Janusz Gmitruk (eds), *Sprawcy klęski wrześniowej przed sądem historii: Dokumenty komisji badawczych władz polskich na emigracji* (Warsaw, 2005); Rabiński, *Stronnictwo Pracy*, 151-2.

Affairs, Gen. Modelski, but effectively directly managed by Colonel Fryderyk Mally, is perhaps the best described unit in historiography.[28] Notably, Modelski also supervised the Office of Human Resources in this Ministry, which gave him almost complete control of the over-manned posts in the Polish Army in France and assured him decision-making powers over whether to accept or reject the miscellaneous Polish troops flowing into France. Needless to say, the mayhem that accompanied the formation of this refugee army gave Modelski the opportunity to effectively eliminate unwanted people from active service.

While officially, the Registration Office belonged to the Ministry of Military Affairs from November 1939, intriguingly, there is evidence of registration questionnaires already in circulation the month before. The task of the Registration Office was to collect records and documents on the September Campaign – not only on its course, but also on the preparations for it. Based on an analysis of the collected material, evidence incriminating anyone guilty of the "September defeat" was to be appropriately collated. This has been corroborated by numerous subsequent accounts of people who went through the positive vetting procedures of the Office after first being interviewed by Modelski. Officers detailed to front-line service were required to fill in a special sheet of comments and observations, as an annex to the "neutral" registration form. According to instructions from 29 October 1939, no one filling in the questionnaire could be restricted in their freedom of expression. It is, however, beyond doubt that critical, negative opinions about command methods and preparations for war were not just desired, they were expected.[29] Interesting traces of this can be found in Modelski's papers in the Hoover Institution Archives at Stanford University and at the Sikorski Institute in London. On the one hand, in his instructions of 20 December 1939, Modelski emphasized that "This work must be so conscientious, precise and comprehensive that the true history of past events can be reconstructed on its basis."[30] On the other hand, he himself admitted that the activities of the Office were to allow grabbing the Sikorski government's opponents by the

28 Fryderyk Dominik Józef Mally (1893-1984) – soldier. In September 1939 General Staff officer. 1939-40 – head of the Registration Office of the Ministry of Military Affairs in Paris. 1940-42 – advisor of the Polish missions in Lisbon. 1942-45 – in the Ministry of National Defense in London. After World War II in exile in the UK – *Polsko-brytyjska współpraca wywiadowcza podczas II wojny światowej*, vol. 2, (Warsaw 2005), III, annotation no. 31.

29 See e.g. Stanisław Rostworowski, 'Wśród piątej emigracji w Paryżu', *Więź*, 6 (1961), 108-128, 112.

30 Hoover Institution Archives in Stanford, Izydor Modelski Papers, b. 1, f. 14A, Geneza powstania i działalność Biura Rejestracyjnego Ministerstwa Spraw Wojskowych, 25.

throat, and "uncovering their crimes and responsibility for the past".[31] Karol Popiel and Karol Estreicher, who were close to Modelski, held similar views on the matter.[32]

During the "French" period (until June 5, 1940), the Office managed to accumulate 7,794 reports from ca. 5,000 people which were catalogued (some of them gave complementary testimonies). The Office itself did not have judicial powers, but its employees could refer cases to the military judiciary. In total the Legal Division of the Office dealt with four hundred and twenty-four cases, of which twenty-three were transferred to the Military Tribunal and eighty-two to field courts. Twenty-six cases were discontinued, thirty-three suspended, and one hundred and twenty-six were left to be settled in the country after the war.[33]

Undoubtedly, Modelski was the moving spirit behind the Registration Office. Without going into the motives of his conduct here (I have tried to present them in a book about the Labour Party in exile during World War II),[34] it should be asked whether Gen. Sikorski supported the actions of Modelski. Initially, definitely yes. In a secret order of 12 March 1940, the Commander-in-Chief said that "the activities of the Office are necessary and useful",[35] indicating not only the value of the collected material to draw conclusions on the September Campaign, but also the fact that "thanks to the work of the Registration Office, a number of serious abuses were revealed, and *a number of individuals unworthy of serving in the Polish army who tarnished the national uniform were eliminated.*"[36] (emphasis added – JR) With time, however, Sikorski distanced himself from Modelski, undoubtedly un-

31 Polish Institute and General Sikorski Museum in London (further: IPMS), ref no. A.5, vol. 8, Minutes of the meeting of the Military Commission of the National Council of Poland 29 June 1942, k. 10.

32 Karol Estreicher (1906-84) – art historian. 1939-40 in the Presidium of the Council of Ministers; 1940-1943 – head of the Office of Restitution of Cultural Losses by the Polish government. Returned to Poland after World War II. Lecturer at the Jagiellonian University, the Academy of Fine Arts in Cracow and the Higher School of Fine Arts in Wrocław. 1951-76 – director of the Jagiellonian University Museum; 1957-84 – president of the Association of Friends of Fine Arts in Cracow – Karol Estreicher, *Dziennik wypadków*, vol. 1-7, (Kraków, 2001-2013); Adam Piskorz, 'Karol Estreicher', in Julian Dybiec (ed), *Uniwersytet Jagielloński: Złota Księga Wydziału Historycznego* (Cracow, 2000), 473-3; Zbigniew Witek, *Karol Estreicher (1906-1984)*, vol. 1-3, (Kraków, 2007-2008).

33 See Hułas, *Goście czy intruzi*, 164; Grzywacz and Kwiecień, 'Sikorszczycy kontra sanatorzy', 75-105; Rabiński, *Stronnictwo Pracy*, 161-7.

34 Rabiński, *Stronnictwo Pracy*, 158-1.

35 IPMS, Kol. 1: The Diary of the Supreme Commander in Chief, vol. 8a, Officer's secret order No 13 of 12 March 1940, 86.

36 Ibid.

der the influence of Gen. Marian Kukiel.[37] Nonetheless, it should be emphasized that Sikorski never removed Modelski from his immediate entourage, and, in fact, kept him in his circle of closest advisers.

The Registration Office only operated in France. Upon the exiled government's evacuation to the UK in June 1940, its activities were not resumed, and any documentation generated by it was handed over to the September Campaign investigation commission. Indeed, another commission was appointed to investigate the root cause of the defeat in 1939, this time not upon the initiative of the government, but by the newly appointed, quasi-parliament-in-exile: the National Council of the Republic of Poland. From the beginning of its activities (the first meeting was held back in France, on 23 January 1940), sharp anti-Sanacja sentiment dominated the speeches of its members and by 9 March, it adopted a proposal for the appointment of this extraordinary commission to clarify the causes of the "September defeat". Council members who signed the request not only demanded that they be allowed to collect any materials that would apportion responsibility for the consequences of the clash with Germany and the Soviet Union, and, based

37 Marian Włodzimierz Kukiel (1885-1973) – independence activist, soldier, military historian. From 1904 – member of the Polish Socialist Party, then the PPS-Revolutionary Faction. From 1908 – member of the Union of Active Struggle, from 1910 – Rifle Association. 1914-1915 – in the Military Department of the Supreme National Committee. 1915-1918 – in the Polish Legions. 1918-1919 – Deputy Chief of Staff of the Polish Army; 1919-1920 – inspector of infantry schools; 1920-1923 – head of the 3rd Division of the Staff of the Ministry of Military Affairs (Brigadier from 1 July 1923); 1923-1925 – Commander of 13 Infantry Division; 1925-1926 – head of the Historical Office of the General Staff (Military Historical Office). In May 1926, he sided with the government, actively participating in the fighting. From September 1926 at the disposal of the Minister of Military Affairs. From 1927 – he taught military history at the Jagiellonian University. 1930-39 – curator of the Czartoryski Museum in Cracow. From 1932 – member of the Polish Academy of Art and Science. From 1936 he managed the Cracow Centre of the Anti-Sanacja Association of the Rebirth of Poland. In 1937 he became a member of the Supreme Council of the Labour Party (which he left in 1939 due to returning to active military service). From October 1939 in exile. 1939-1940 – 1st Deputy Minister of Military Affairs (Major-General as of 3 May 1940); 1940-1942 – commander of the 1st Polish Corps in Scotland; 1942-1949 – Minister of Military Affairs / National Defense in the governments of Władysław Sikorski, Stanisław Mikołajczyk, Tomasz Arciszewski and Tadeusz Komorowski. After 1945 co-founder and president of the Polish Historical Association abroad, the Board of the Polish Institute and Sikorski Museum in London, Polish Scientific Society in Exile, the Polish University Abroad – Marian Kukiel, *Generał Sikorski: Żołnierz i mąż stanu Polski Walczącej* (London, 1970); idem, *Historia w służbie teraźniejszości i inne pisma emigracyjne*, selected and ed. by Habielski (Warsaw, 1994); Janusz Zuziak, *Generał Marian Kukiel 1885-1973: Żołnierz, historyk, polityk* (Pruszków, 1997); Rafał Habielski and Marek Jabłonowski (eds), *Marian Kukiel: Historyk w świecie polityki* (Warsaw, 2010).

on this information, indict anyone guilty of negligence. After a two-month period of preparatory work, on 8 May, the government adopted a draft presidential decree on the matter which the president signed on 30 May – that is, during the German offensive against France. The commission (Prof. Bohdan Winiarski[38] as Chairman, S. Mikołajczyk, H. Lieberman, K. Popiel and I. Modelski) convened, still on French soil, on 8 June. When Lieberman died, his place was taken by Jan Kwapiński in 1942.[39] The commission was disbanded in June 1945.[40]

In conclusion, it must be emphasized that all of these activities took place in the early, French period of exile of the Polish government. The defeat of France, whose speed and extent put the Polish defeat of September 1939 into perspective, went a long way in moderating the more vociferous critics of the previous regime. The new problems that the Polish authorities in London had to handle pushed the issue of settling old scores into the background. The Soviet-German war and reactions of the Polish exiled community to the Sikorski-Maysky Agreement brought new divisions in Polish politics. This time it was the policy of Sikorski's government-in-exile that attracted critical attention by dint of which the pre-war divisions were tacitly put aside.

This does not mean that in the UK, Sikorski's closest acolytes, men like Modelski, Popiel and Mikołajczyk, changed their attitude to the Piłsudski camp. However, it is difficult to see any attempts to bring to account the exponents of the Sanacja regime after the summer of 1940. Efforts to curtail the resurgent influence of Piłsudski'ites on political life in exile and on the military underground back home were made, typically by ousting them from the Polish Armed Forces in the West. Efforts were made to draw the British into anti-Sanacja machinations and, indeed, some "undesirables" were even deprived of freedom of movement and kept in special camps, such as in Rothesay on the Isle of Bute. All available propaganda tools were used to paint a negative picture of Pilsudski'ites for public consumption (though it

38 Bohdan Winiarski (1884-1969) – lawyer. 1922-1939 – lecturer in international law at the University of Poznan (1936-1939 Dean of the Faculty of Law). 1928-1935 – Lower House deputy of the National Party. 1946-1967 – judge in the International Court of Justice in The Hague (1961-1964 Chairman).

39 Jan Kwapiński, actually Piotr Edmund Chałupka (1885-1964) – socialist politician. 1922-30 – Lower House deputy. 1942 – minister without portfolio in the government of Gen. Sikorski; 1942-43, 1944-47 – Minister of the Treasury and Industry, Trade and Navigation in the cabinets of Władysław Sikorski and Tomasz Arciszewski – Jan Tomicki, 'Kwapiński Jan', in *Polski Słownik Biograficzny*, 16/70 (Wrocław-Warszawa-Kraków-Gdańsk, 1971), 334-5.

40 See Hułas, *Goście czy intruzi*, 154; Andrzej Grzywacz and Marcin Kwiecień, 'Rada Narodowa Rzeczypospolitej Polskiej w walce z sanatorami 1939-1941', *Zeszyty Historyczne*, 131 (2000), 10-43; Adamczyk and Gmitruk (eds), *Sprawcy klęski wrześniowej przed sądem historii.*

should be added that this was not without Piłsudski'ites paying them back in kind).

To recapitulate, after the evacuation of the Polish government to Britain, it is difficult to identify any attempts at revenge *qua* legal punishment of the old pre-war regime by the new wartime authorities. Even in the "French" period, such urges were subject to restrictions. But that is not to say that Sikorski did not consent to documenting the responsibility of his predecessors (contrary to his public assurances about letting bygones be bygones or at least putting them on the back-burner for the duration of incalculably greater priorities). To be sure, his closest collaborators did not ease up in their efforts to gather material incriminating opponents, and in establishing institutions for that purpose. Of course this drive stopped short of seeking to mete out summary justice on dubiously defined grounds of penal liability; there, some kind of line was drawn and the exclusive domain of the professional judiciary was recognized. They performed their duties conscientiously, some might even say with ingratiatingly excessive zeal. Sikorski's legal experts also took care to ensure that the activities that were undertaken complied with the binding law. Reckonings of the Polish authorities in exile with the past never turned into a lawless vendetta against exponents of the old system, with open violations of legal standards.

There can be no doubt that the sensitive process of settling scores with the previous government was a crucial factor in the claim to legitimacy of the new government. Without any evidence of the guilt of its predecessors, it was not easy to explain the seizure of power in wartime conditions, when only continuity of government could ensure internal stability and the continued recognition of international agreements. The dissonance between the pre-war regime's assurances of the country's security and its total collapse could only legitimize the opposition's opportunism. Hence the importance the new regime attached to highlighting the culpable errors of its ousted predecessors.

2. Dealing with State Crimes

Andrzej Paczkowski

Crime, Treason and Greed: The German Wartime Occupation of Poland and Polish Post-War Retributive Justice[1]

At the outset it should be explained that this paper looks at "German crimes and collaboration with the German occupiers" when, in truth, Poland was divided between two occupiers, German and Soviet, from 17 September 1939 to 22 June 1941. Due to the course of the war, the re-entry of the Red Army into Poland in 1944, and the establishment of a permanent communist dictatorship under its protection, neither collaborators with the Soviet authorities, nor accomplices in Soviet World War II crimes, were ever brought to justice in Poland after the war. Furthermore, the émigré Polish authorities were not even-handed either in demanding punishment for the war crimes of both invader-occupiers of Poland as decreed by the President-in-Exile. It was recognized that in the geopolitical situation of the time, such a demand would scupper "any possibility of implementation" of any part of the design.[2] Therefore only Germany was to be arraigned. The issues of Soviet war crimes and collaboration with the Soviets were raised frequently by members of the émigré community (which also took the form of case studies in the application of law in theory and practice), but the growth of popular consciousness back in Poland as to their scale was a long-drawn process. After 1976, samizdat publications of a nationwide reach on the subject began to circulate and after 1989, and a number of inquiries into Soviet war crimes (notably the Katyń Massacre) were published. However, the justice system did not deal with cases of participation of Polish citizens in these crimes or

1 This text was written as a contribution to the "Punishment, memory and politics: retribution against the past since the World War II" research project, financed by the National Science Center (NCN Project: DEC-2013/10/M/HS3/00577).

2 Statement of Min. Stanisław Stroński, in Marian Zgórniak, *Protokoły Posiedzeń Rady Ministrów Rzeczypospolitej Polskiej*, vol. 4, (Kraków, 1994), 353.

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with other forms of collaboration. In principle they were only the subject of academic research and popular history. Given that there was a three-year hiatus in the process of the Soviet subjugation of Poland due to the German offensive against the Soviet Union in 1941, the German wartime occupation lasted three years longer (1941-44) than that of the Soviets and covered Polish territory and its inhabitants in its entirety, which brought many more deaths and material losses than could be ever imagined. As opposed to Soviet crimes, which were generally committed covertly or in remote, uninhabited areas, German crimes were often intentionally committed in public, in city streets, or in villages whose inhabitants were exterminated and their homes razed to the ground in reprisals. To be sure, the concentration camps were something of an exception in German policy in that they were built in out-of-the-way areas or at least shrouded in secrecy (however ill kept) as to their purpose. No wonder that most Poles believed Germans to be the main – and some even believed they were the only – perpetrator of the hecatomb of five and a half years' duration that befell Poland. As a result, Germans were the only "official enemy" and Germans – and persons collaborating with them – became the object of post-war retributive proceedings. Such an attitude was useful to communists, because – as Władysław Gomułka said in February 1945 – "[it] unites the Polish Nation."[3]

The Second World War is often defined as a "total war", so the occupation of the territory of the Second Polish Republic (as interwar Poland is often referred to) should probably be called a "total occupation". However, it was not so much the totalitarian political systems of Germany and the Soviet Union, but, due to the Holocaust, attention was concomitantly drawn to the genocidal character of their policies in occupied Poland. The irrevocable losses in that war still await an exhaustive audit,[4] though the estimated figures accounting for losses in conventional and partisan warfare and uprisings suggest that about 500,000-550,000 people (mainly civilians) were killed, which constituted no more than 10% of the overall number of losses. Thus, it may be said that most casualties were not caused by war as such, but by the resulting occupations, and that most of the victims were murdered by the Germans. An important component of the terror unleashed during the occupation was the forced evictions and deportations which affected more than two million people. Due to their destination, Soviet deportations were much more drastic and deadly than the German ones. While Germans transported

3 As cited in Leszek Olejnik, *Zdrajcy narodu? Losy volksdeutschów w Polsce po II wojnie światowej* (Warsaw, 2006), 139.

4 For the most recent debate on this topic see Wojciech Materski and Tomasz Szarota (eds), *Polska 1939-1945: Straty osobowe i ofiary represji pod dwiema okupacjami* (Warsaw, 2009), especially 13-75.

people to the General Government of the Occupied Polish Territories (the surviving rump of pre-war Poland, inhabited by Poles but under German administration – further referred to as the General Government), the Soviets sent their victims to northern Russia or east of the Urals. It should be obvious that the total character of the war and occupation gave subsequent retributive justice additional emotional weighting, and justice, which should have been meted out, was all too often replaced – or supplemented – with the desire for retribution.

Dealing with the Occupation – The Specific Character of the Polish Case

As regards the way Poland sought to square accounts with her wartime oppressors, it is important to note that she was not a satellite state of the Third Reich and not a collaborating pseudo-state (such as the Protectorate of Bohemia and Moravia or the Independent State of Croatia). The Germans treated the General Government as German territory exclusively governed by Germans, albeit at least temporarily lying outside the Third Reich, while Poland's western and northern territories were incorporated directly into the Third Reich. Thus, there was no Polish institutional cooperation with the Germans at the national level and, after the war, the problem of putting on trial political and military elites that formally and officially collaborated with the Third Reich, as was the case elsewhere in Europe, did not exist. Therefore, it could not constitute the basis of dealing with wartime crimes. The formal continuity of the Polish state was preserved, and the legal authorities of the Republic of Poland in exile had at their disposal armed forces that continuously fought against the Germans. Back in Poland itself, underground resistance institutions were created, notably those that were to form the Polish Underground State (PPP – Polskie Państwo Podziemne). These institutions comprised, among others, an underground administration (led by the Government-in-Exile's Delegate for Poland), a judiciary and representations of the major political parties. The basic components of the Polish Underground State were its armed forces (as from February 1942 called the Home Army [Armia Krajowa – AK]) with the primary strategic goal of staging a general uprising at a propitious moment. In the territories under German occupation, there were no permanent centres of political collaboration. Although attempts were made by miscellaneous individual Poles acting on their own initiative,[5] the authorities of the Third Reich ignored them.

5 One of the first initiatives was the address to the German authorities of 23 Novem-

The only sustainable collaborating institution – but not involved in political collaboration – was the Polish Police (*Polnische Polizei,* PP), commonly called the "navy blue police" on account of the colour of their uniforms. Although its main task was law enforcement, its officers often were accomplice to German crimes. The existence of only one collaborationist institution did not mean that there were no individuals cooperating with the Germans in the General Government. Some Poles acted as public administration officials (for example village headman), under the orders of the occupation authorities. Typically, they worked for the post office, the railways, the fire brigade or the prison service of the occupation institutions and German troops. A Polish bank was allowed to operate, and a limited Polish judicature was allowed to function. Quasi local governments for Jews *(Judenrat)* were set up and charged with administrative tasks, and a Jewish Law Enforcement Service *(Jüdischer Ordnungsdienst)* whose officers did not carry arms was established in the ghettoes. Hence, cases of membership of, or cooperation with the occupation institutions (such as the police) were not rare; indeed, it provided fertile soil for the temptation to collaborate with the enemy to flourish in. Some individuals, who worked for Polish language press publishing houses, were secret agents of the Gestapo and other police formations, while still others performed supervisory functions in the concentration camps. Many people, on their own initiative, sometimes knowingly, sometimes by way of unavoidable spin-off effects of their actions, sometimes individually, and sometimes collectively, lent support to the German occupiers' policies. For instance, the liquidation of ghettoes was, more often than not, accompanied by murder, pillage and plunder, or *szmalcownictwo* – the blackmail and betrayal of Jews in hiding. Informants frequently betrayed members of the underground resistance or people they knew or knew of out of spite, envy or revenge. Many people did not obey the orders of the underground authorities, which ranged from forbidding maintaining relations with Germans to performing in theatres and involvement in any other walks of public life, all of which were under the watchful control of the German authorities.

In Poland, a specific aspect of the problem of collaboration was the introduction of the German People's List (*Deutsche Volksliste,* DVL), which

ber 1939 of the well-known politician and publicist Władysław Studnicki, entitled "Memoriał w sprawie odtworzenia Armii Polskiej i w sprawie nadchodzącej wojny niemiecko-sowieckiej". In his next memorandum "Memoriał dla Rządu Niemieckiego w sprawie polityki okupacyjnej w Polsce" of 20 January 1940, Studnicki harshly criticized the policy of the Third Reich, which resulted in his initiative failing completely. For both memoranda see Jan Weinstein, 'Władysław Studnicki w świetle dokumentów hitlerowskich II wojny', *Zeszyty Historyczne*, 11 (1967), 54-61, 61-86. In September 1944, Studnicki – like other Poles who were sounded out – rejected the German idea of forming a Polish Anti-Bolshevik League.

was divided into four categories or groups, which established *Volksdeutsche* (VD – Ethnic Germans) status. From spring 1940, special offices were set up to implement the scheme; they decided which group a candidate should belong to. In 1942, in the territories directly incorporated into the Reich, especially in Silesia and Pomerania, registration became mandatory; non-compliance with these orders carried the threat of deportation, confiscation of property, expropriation, despatch to a concentration camp or whatever other sanctions the authorities could think up. Members of groups 1 to 3 were compulsorily enlisted. Approximately 220,000-250,000 Poles in total were thereby automatically called up for military service in the German army. Both the Polish émigré authorities and the Catholic Church authorities began to encourage volunteering for the third group in order to avoid the mass extermination of Poles. All members of the first group became full-fledged German citizens *(Reichsdeutsche)*. Altogether, more than 2.8 million people were registered. The third group consisted of approximately 1.7-1.8 million people, mainly from Silesia and Pomerania. There was no division into categories in the General Government, and more than 100,000 Polish citizens declared themselves to be *Volksdeutsche*, while in the southern Polish mountain region of Podhale the Germans tried to convert the highlanders, the Górale, into a separate ethnic group which they named *Goralenvolk*. Foreigners (for example Lithuanians or White Russians), stateless persons and Ukrainians had a separate status. They had some privileges that were denied to Poles. This system introduced deep divisions among people who were all Polish citizens.

Simultaneously with the issue of punishing war criminals, the problem with people of German descent also emerged. On 30 November 1939, President Raczkiewicz announced the intention to deport Germans after the war because, as the Ministry of Foreign Affairs explained, "it is impossible for the future Polish population and the German minority to coexist."[6] In August 1944, the National Council of Ministers, being formally part of the government of the Republic of Poland, issued regulations on the loss of Polish citizenship by all people of German nationality, which meant their future expulsion. In addition, the national authorities, created in 1944 under the auspices of the incoming Soviet-sponsored communists (PKWN – Polski Komitet Wyzwolenia Narodowego – Polish Committee of National Liberation, KRN – Krajowa Rada Narodowa – National Home Council), promised to expel Germans residing in Poland. Finally, the Big Three at the Potsdam Conference agreed on a radical solution: the total removal of Germans from the ter-

6 Cited by Stanisław Jankowiak in *Wysiedlenie i emigracja ludności niemieckiej w polityce władz polskich w latach 1945-1970* (Warsaw, 2005), 28.

ritories of Poland, Czechoslovakia and Hungary. In effect, all Germans were held to be collectively responsible for the wartime crimes and world conflict unleashed by their government; thus the war crimes committed in Poland in the course of its German occupation automatically fell under this category.

The Polish émigré authorities announced in December 1939 that "after winning the war, the Republic of Poland shall take reprisals against Germany, especially its authorities."[7] Together with France and Great Britain, in April 1940, a declaration was made, in which Poland was promised "compensation for the harm it had suffered", though punishment of those responsible for the crimes was not mentioned. However, the public announcement issued after the meeting of Sikorski and Stalin in December 1941 spoke of the "proper punishment of Nazi criminals". In January 1942, in St. James's Palace in London, representatives of exiled governments met and recognized the need to "punish Nazis and their accomplices for their crimes". On 30 March 1943, the President-in-Exile issued a decree on "criminal responsibility for war crimes".[8] In autumn, a criminal investigations office was set up at the Ministry of Internal Affairs (*Ministerstwo Spraw Wewnętrznych* – MSW). It possessed files on 4,000 German criminals[9] and a similar unit, called the Central Commission for Studying and Recording of Occupant Crimes, was established as part of the apparatus of the Government Delegate for Poland in January 1944.[10] Both in Poland and in the Soviet Union, Polish communist agencies promised to punish criminals and collaborators.[11]

For the Polish émigré authorities, due to complications in international relations, the main object of interest was the crimes committed by just one invader, the Germans, and "additionally", cases of treason were taken into consideration.[12] They were the most important for the Polish Underground State. Therefore, Special Military Courts, (WSS – *Wojskowe Sądy Specjalne*) and Special Civil Courts (CSS – *Cywilne Sądy Specjalne*) were created, and a code of

7 Marian Zgórniak (ed), *Protokoły posiedzeń Rady Ministrów Rzeczpospolitej Polskiej*, vol. 1, (Kraków, 1994), 15.

8 For the text of the Decree see: *Pamięć i Sprawiedliwość*, 38 (1995), 190-1.

9 Elżbieta Kobierska-Motas, *Ekstradycja przestępców wojennych do Polski z czterech stref okupacyjnych Niemiec, 1946-1950*, vol. 1, (Warsaw, 1991), 47-8.

10 Waldemar Grabowski, *Polska tajna administracja cywilna, 1940-1945* (Warsaw, 2003), 283. According to Edmund Dmitrów, the materials concerning Poland presented at the Nuremberg Trials "included mostly materials collected and prepared in London" – Edmund Dmitrów, *Niemcy i okupacja hitlerowska w oczach Polaków: Poglądy i opinie z lat 1945-1948* (Warsaw, 1987), 255.

11 Among others in the manifesto of July 22, 1944.

12 Among others, in May 1940, the "Material provisions" of the Criminal Code were supplemented by new types of crimes: provocation, denunciation and inhuman persecution – Piotr Kładoczny, *Prawo jako narzędzie represji w Polsce Ludowej (1944-1956)* (Warsaw, 2004), 177.

civil morality was drafted to cover contingencies not included in the Criminal Code, viz. conduct which "compromised the responsibilities of Poles during the war".[13] Offences under the code of civil morality were tried by "Judicial Civil Combat Commissions". Lists of people collaborating with the Germans were published in the underground press; such stigmatisation spelt infamy and exclusion from Polish society at the very least. According to the estimates of Leszek Gondek, during the German occupation[14] approximately 2,500 people were sentenced to death and the courts examined about 5,000 cases,[15] with the Judicial Civil Combat Commissions adding a few hundred more names to that total. However, it should be added that executions of snitches, informants or "navy blue police officers" had commenced before these courts were established. The number of people shot without trial, only on the basis of orders from above, was never even estimated. These were underground resistance initiatives undertaken as reprisals or in self-defence, but nevertheless, they can be also considered the *sui generis* dispensation of justice (sometimes with the use of legal instruments) in regard of treason and crimes related to the wartime occupation. Therefore, the problem of dealing with crimes consisted of several elements: punishing the perpetrators of German crimes and their accomplices (including Poles), the removal of Germans from Poland, solving the problem of Polish citizens who were enrolled on Volkslists and German citizens of Polish descent and persons who failed to fulfil their "duties as Poles". All these actions were certainly undertaken regardless of which political force dominated in Poland and the political system of the state. However, since the early summer of 1944 – in line with the Soviet Union's plans and under its international "umbrella" – the foundations of a communist-dominated state had been laid. As a result, the process of the judicial calling to account for wartime crimes and treason in relation to just one invader-occupier (because Soviet crimes had to be swept under the carpet for obvious reasons) was stage-managed by the new Soviet-sponsored authorities; awkward as this situation may have been

13 Cited in Piotr Szopa, *W imieniu Rzeczypospolitej … Wymiar sprawiedliwości Polskiego Państwa Podziemnego na terenie Podokręgu AK Rzeszów* (Rzeszów, 2014), 30.

14 Reactions of the underground state to collaboration with the Soviets were relatively rare, nevertheless before the Soviet-German war; in Vilnius, for instance, four executions were carried out – Paweł Rokicki, 'Wymiar Sprawiedliwości Polskiego Państwa Podziemnego na Wilecczyźnie', in Waldemar Grabowski (ed), *Organy bezpieczeństwa i wymiar sprawiedliwości Polskiego Państwa Podziemnego* (Warsaw, 2005), 92-111, 98. The best known execution was that of Teodor Bujnicki. Judgment (for "collaboration with the Soviet Union to the detriment of Poland") was delivered by the Special Military Court in Vilnius in December 1942 and carried out with a two-year delay.

15 Leszek Gondek, *Polska karząca 1939-1945: Polski podziemny wymiar sprawiedliwości w okresie okupacji niemieckiej* (Warsaw, 1988), 114.

for this new regime, it had no compunction in using this drive for retributive justice to legitimise its seizure of power and its struggle with its political opponents.

The main legal instrument used for judging classic war crimes and contingent occupation-period crimes was the decree of the Polish Committee of National Liberation "on punishment for fascist-Nazi criminals responsible for killing and abusing civilians and POWs and for the traitors of the Polish Nation."[16] It was signed on 31 August 1944, so it is called the *August Decree* (colloquially called *Sierpniówka*). It covered acts committed from 1 September 1939 to (as it was decided later) 9 May 1945. The decree did not exclude charging those brought to book under the Criminal Code of 1932. The provisions of the *August Decree* concerned persons who "by acting for the benefit of the German state" were guilty of: "participating in killings" (Article 1, Item 1), undertaking "actions to the detriment of persons … by capturing or deporting sought or persecuted persons" (Article 1, Item 2), "operated otherwise … to the detriment of the Polish State, Polish legal (corporate) persons, members of the civilian population or soldiers" (Article 2), and those who exerted "duress … under threat of capturing these persons and delivering them into the hands of the authorities" (Article 3). Article 4 listed criminal organizations and institutions. Membership of these organizations could have been sufficient reason in itself for prosecution.[17] Those who committed crimes defined under Article 1 were always sentenced to death. For crimes under Article 2, the death sentence was optional, while the minimum penalty for crimes coming under Articles 2, as well as Articles 3 and 4, were three years in prison. All penalties were accompanied by the confiscation of property. These very severe provisions were similar to those that were soon to be adopted internationally.

Deportations of the German Population

In terms of the number of people subject to punishment for war crimes, the deportation of the German population posed the biggest challenge. It started on 20 June 1945 when, without waiting for the definite adjudication of the Big Three, units of the Second Polish Army began "cleansing Polish territories

16 *Dziennik Ustaw*, 4 (1944), item 16. Giving the decree such an outlandish title was almost certainly in imitation of the Ukase of the Supreme Council of Soviet Union of 19 April 1943 "on penalties for German-Fascist evildoers, guility of killing and the agony of Soviet civillian population, Red Army soldiers taken prisoner [and] for spies [and] traitors of the homeland among Soviet citizens and for their accomplices".

17 To a list created by the International Military Court Polish legislators added the Ukrainian Insurgent Army (UPA – Ukraińska Powstańcza Armia).

of German filth".[18] Within about a month, approximately 600,000-700,000 people were deported.[19] After a break of one month, the second phase of deportations started, organized this time by the civil authorities (including the security apparatus). By December, the total number of expulsions during this phase probably exceeded 400,000.[20] After 20 November 1945, on the strength of a resolution of the Allied Control Council for Germany, the third phase of deportations was commenced. The first transport to the British zone, codenamed 'Operation Swallow', was despatched on 24 February 1946. By the end of the year, roughly 1,650,000 persons were transported out of Poland by train, and some 200,000 to 300,000 (mostly from the close-lying border areas) probably left Poland by other means of transport.[21] In January 1947, the British stopped accepting transports of German deportees, and in the Soviet zone they were accepted only until the end of October of that year. This initiative finally ended in 1949; commencing in February 1946, it affected approximately 2.6 million people in total.[22] Altogether, from June 1945 to the end of 1949, approximately four million people were forced to move.[23] In the following years, relocations, now called repatriations, were based on a contract with the newly created German Democratic Republic (the GDR, popularly known simply as East Germany), to "reunite families" on the basis of individual applications. Therefore, these relocations were of a different character.

The deportations were frequently laced with violence ranging from homicide, robbery and rape to common-or-garden brutality, but there are no credible estimates of the numbers of victims involved. Germans were unceremoniously ejected from their homes, their workshops, their farms, all of which were sequestrated, and compelled to work a 60-hour week. Usually they had to wear identity badges (stitched on patches or armbands). German schools were liquidated, Protestant churches were turned into Roman Catholic churches. Tens of thousands[24] were sent to labour camps. These were

18 Jankowiak, *Wysiedlenie*, 90. Quote from the order of the day of the 10th Infantry Division commander.

19 Ibid., 95.

20 Ibid., 118.

21 Ibid., 162.

22 Ibid., 207.

23 There are still no credible estimates of the German population that escaped or was evacuated before the approaching Red Army. Perhaps it was approximately four million people. The number of deaths among these fugitives, from exhaustion, accident or enemy action was enormous, probably running into hundreds of thousands.

24 According to some estimates, approximately 130,000-150,000 civilians were sent to detention camps – Kładoczny, *Prawo jako narzędzie,* 199. The status as of January 1947 was that 124,000 persons, including approximately 43,000 former Polish citizens, still remained in these camps – Tadeusz Wolsza, *W cieniu Wronek, Jaworzna*

transitional camps, but some people were kept in them for extended periods of time. Similar procedures were also applied to the Germans in the lands incorporated into the Reich, regardless of whether they were settlers from the east (typically from the Baltic States and Bessarabia) who were brought there in considerable numbers in 1940-1942 or "local" Germans, enrolled on the 1st or 2nd group Deutsche Volksliste (German People's List). Sometimes Germans were lynched by their Polish neighbours.[25] Deportations of Germans also extended to the so-called autochthons, German citizens of Polish descent (Silesians, Kashubians or Masurians). Refraining from deporting them was useful for legitimisation purposes (proving that Poland was returning to her "primeval Piast lands"), and for patriotic and economic reasons. The problem of separating Poles ("autochthons") from Germans emerged immediately after establishing the Polish administration in former German lands. In the first months after the entry of the Red Army, these autochthons were often treated as Germans; as such, they were subject to remand in custody, in gaol or detention camp; they, too, were often the victims of violence, robbery and rape. Poles from central Poland and those forcibly resettled from eastern Poland (which was annexed by the Soviet Union) were usually suspicious and very frequently hostile towards them. Numerous excesses, attempted seizures of property, farms and equipment, were recorded. As a result, many autochthons volunteered for "repatriation" to Germany. Uniform vetting regulations were issued on 20 June 1945, but soon the regulation "on the procedure of identifying the Polish national origin of individuals residing in the area of the Recovered Territories" of 6 April 1946, and the Act of 28 April "on Polish citizenship of positively vetted people" enabled the commencement of their full-scale vetting process. It ended in 1949, and the population census of 1950 demonstrated that roughly 1.1 million people were positively vetted.[26]

A particular category subject to onward repatriation were the 50,000 or so POWs passed on to Poland by the NKVD. This was related to the con-

i Piechcina … 1945-1956: Życie codzienne w polskich więzieniach, obozach i ośrodkach pracy więźniów (Warsaw, 2003), 117.

25 For instance, on the day the Red Army entered Łódź, "Germans, beaten severely to a greater or lesser extent … (with a few being) killed by the populace along the way", were brought to the town hall – according to the account of Mieczysław Kosiński, the chairman of the Łódź Civic Committee, in *Karta*, 83 (2015), 7. It is not clear whether the Germans were soldiers or civilians. The most famous case was that of Aleksandrów Kujawski and the neighbouring Nieszawa where, in early February 1945, a dozen or so Germans were drowned in the Vistula – Piotr Pytlakowski, 'Jak na Kujawach zabijano Niemców', *Polityka*, 6 (2001).

26 Piotr Madajczyk, 'Niemcy', in Piotr Madajczyk (ed), *Mniejszości narodowe w Polsce: państwo i społeczeństwo polskie a mniejszości narodowe w okresach przełomów politycznych (1944-1989)* (Warsaw, 1998), 66-109, 71.

tract with the Soviet Union on the export of large quantities of bituminous coal.[27] In October-November 1945, about 40,000 of these POWs were transferred to camps organized in Silesia and Zagłębie Dąbrowskie by the Central Board of Coal Industry. Others were divided into smaller groups. The conditions in the camps were very poor and work in the mines was crippling. Ten percent of the prisoners died for these reasons alone. POW camps were protected by the Geneva Convention, which formally prevented the employment of officers (approximately 1,400). As from 1948, propaganda regarding "democratic Germany" was quite intensive. By decision of the Great Powers, captives should be released and sent back to Germany by the end of 1948, but Poland, for economic reasons, delayed this process and the last transports of prisoners released and allowed to return to Germany left in April 1950.

Punishing the *Volksdeutsche*

The situation of the *Volksdeutsche* was exceptionally complicated. While the demand to punish all of them was quite common, the more popular opinion was that the differences between those who participated in crimes (and were thus subject to punishment on the strength of the *August Decree*) and those who merely enjoyed certain privileges, but did not actively commit crimes, should be taken into consideration. An informal division into "active" and "passive" collaboration was introduced.[28] The first was covered by the *August Decree*, the second by the Decree of 4 November 1944 "on protection measures for the traitors of the Nation".[29] It stated that "regardless of [possible] criminal responsibility", each person who declared being of German origin is subject "to arrest [and] confinement in a forced labour camp" for an indefinite period of time. Implementation of the Decree was finally entrusted to the prosecutor of the Special Criminal Court (SSK – Specjalny Sąd Karny – as discussed later below), but initially, decisions were undertaken by the local secret police. Executive regulations envisaged the confiscation of property and the remand of those above thirteen years of age in prison camps. Approximately 9,800 public prosecutors' orders were submitted for approval to the Special Criminal Courts,[30] but there were probably more prisoners. These were extremely draconian dispositions, but in line with popular expectations towards people regarded as traitors. They were not only publicly

27 Jerzy Kochanowski, *W polskiej niewoli: Niemieccy jeńcy wojenni w Polsce, 1945-1950* (Warsaw, 2001), 50.
28 Olejnik, *Zdrajcy*, 71.
29 *Dziennik Ustaw*, 11 (1944), item 54.
30 Olejnik, *Zdrajcy*, 77.

ostracized and dismissed from work, but also their properties were often expropriated and they were subjected to acts of violence. So far, no research has been made into these spontaneous reckonings with crimes; therefore, it is not possible to quote any figures.

The Decree of 4 November proved a dead letter in the lands incorporated into the Reich in 1939 as it would have meant having to imprison more than a million people. Therefore – after some disturbances – on 6 May 1945, "the Act on exclusion from Polish society of hostile elements"[31] was adopted. Under this Act, people who were in the first *Volksdeutsche* group were designated for resettlement, while those in the second group, if they wanted reinstatement and recognition as Polish citizens, had to apply to the courts for rehabilitation. A similar procedure was applied to persons regarded as belonging to one of "privileged national groups". Rehabilitation of mentally challenged persons of the largest, the third group, was treated differently. In areas where the Germans pressured or coerced people into applying for *Volksdeutsche* status, the rehabilitation procedure was limited to submitting a "Declaration of loyalty to the Polish Nation and the democratic Polish State". The applicant would receive a temporary certificate of submission of such a declaration, which meant that he could enjoy all civil rights. The final deadline for making that declaration was 31 July 1946 and in the absence of opting for voluntary rehabilitation, the judicial track would automatically kick in whereby the recalcitrant individual could be sent to labour camp, lose his civil / civic rights and have his property confiscated. In the areas where the Germans did not apply coercion, rehabilitation was possible only by proving in court that the applicant had acted under duress, against his will, and preserved his Polish national identity all the same. Denial of rehabilitation meant moving to the first group. This spelt expulsion. One of the most important provisions of the decree was the right to confiscate the property of persons of the first and second *Volksdeutsche* groups, and of *Volksdeutsche* from the General Government. According to some estimates, in this way approximately 100,000 farmsteads were expropriated.[32] Due to delays, political security officers and prosecutors operated for some time on the strength of the Decree of 4 November 1944 in the territories that had been incorporated into Germany (as opposed to merely being conquered and kept under German control). This resulted in a rapidly increasing number of people of various *Volksdeutsche* categories being imprisoned. They were imprisoned together with Germans who were to be deported and the conditions they

31 *Dziennik Ustaw*, 17 (1945), item 96.

32 Jerzy Kochanowski, 'Wyłączanie wrogich elementów', *Gazeta Wyborcza*, (February 12-13, 2000).

were kept in, and the attitudes of their gaolers to them and true Germans, were identical. Many thousands, including an indeterminate number of *Volksdeutsche*, died in the camps of natural causes or, less frequently, they were killed.[33] At the time of adopting the May Act, there were approximately 355,000 *Volksdeutsche* in the camps.[34] According to the so-called aggregate population census of 14 February 1947, approximately 223,000 rehabilitation proceedings were in progress[35] and, until a given ruling was issued, the given applicant was deprived of all civil rights, almost always dismissed from any white collar employment they may have had, and sometimes had their property confiscated. A lot of people were awaiting trial[36] and the awkwardness of this situation was intensified by the fact that due to the large number of cases, even in seemingly exceptional cases, this situation sometimes dragged on for a very long time.[37] Applicants were vetted for membership of Nazi organizations like *Hitlerjugend* (HJ) or *Bund Deutscher Mädel* (BDM), and any proof positive to that effect was treated as a disqualifying condition. SA (*Sturmabteilung*) members were also tracked down. In Silesia, they were the largest group among those arrested and in autumn 1946, by decision of the International Military Tribunal, the SA was excluded from the list of "criminal organizations." During all rehabilitation proceedings, denunciations

33 Olejnik, *Zdrajcy*, 156.

34 Ibid., 154.

35 Ibid., 103. This number includes 129,200 cases examined by the courts of Silesia, 44,900 by the courts of the Gdańsk Region, 28,200 by the courts of Poznań, 17,700 by the courts of the Pomerania Region, approximately 14,000 by the courts of the Ciechanów Area, 13,700 by the courts in Łódź and in the Łódź Region; in order to act in accordance with the regulations, all of them should be isolated "for an indefinite time", which was rather impossible.

36 According to the above data, by 14 February 1947 only roughly 1/3 of the applications were examined.

37 This was the case with the application submitted by one of the most famous avant-garde painters, Władysław Strzemiński. The artist, because of his wife, the well-known artist Katarzyna Kobro, who was a Russian, adopted the status of a "privileged national minority". In October 1945 he submitted an application for rehabilitation, which, after two letters sent by the Association of Polish Visual Artists supporting his application (and urging the court to exercise leniency), was examined after more than a year. Details – Małgorzata Czyńska Kobro, *Skok w przestrzeń* (Wołowiec, 2015), 178-81. Kobro declared she was a Russian (though her family were Courland Germans), which released her from the obligation of "loyalty to the nation", and therefore she did not apply for rehabilitation. Unexpectedly, in 1949, she was denounced, accused and sentenced to six months in prison. She lodged an appeal and was acquitted a year later.

or incriminating witness testimonies, often motivated by personal revenge, were very frequent.[38]

To standardise proceedings, a decree "on criminal responsibility for deviating from one's [Polish] nationality during the war of 1939-1945",[39] was signed on 28 June 1946, but passed into law with a four-month delay on 21 October. The provisions of the Decree were quite drastic: in the absence of mitigating circumstances, affiliation to German nationality (or to privileged nationality status) was punished by ten years in prison, a fine, the total or partial confiscation of property, loss of civil / civic rights. These penalties could be imposed jointly. Meanwhile, this legal act was supplemented on 13 September 1946 by the Decree "on exclusion from Polish society of persons of German nationality",[40] which was implemented on 25 April 1947, when its corresponding executive regulation was issued. Loss of citizenship was decided by local authorities because the Decree of 17 November 1946 liquidated the Special Criminal Courts and their competencies were transferred to the common courts. So it may be concluded that the legal status of the *Volksdeutsche* was finally regulated.

Court cases ran in line with the Decree of 28 June started in 1947 with approximately 7,600 people being sentenced on that basis. Only 0.9 % of the defendants were sentenced for more than five years in prison and approximately 41 % were sentenced for one year in prison or remanded in custody (for up to three months). There were many court proceedings which were conducted quite slowly: at the end of 1947 they concerned 43,100 persons.[41] However, there were many acquittals and according to the estimates of Andrzej Pasek, in the period 1946-1950, only approximately 16,000 people were sentenced.[42] The effective date of a new decree did not imply that all those who were sent to prison camps for an "indefinite time" were automatically released. From June 1948 to January 1949, a special joint ministerial commission visited the largest camps where *Volksdeutsche* were held. Approximately 32,400 persons were interrogated, which means that so many persons were still subject to isolation and forced labour. Soon, however, these camps were

38 Attention is drawn to this fact by Adam Dziurok in *Śląskie rozrachunki: Władze komunistyczne a byli członkowie organizacji nazistowskich na Górnym Śląsku w latach 1945-1956* (Warsaw, 2000), 92 and 107.

39 *Dziennik Ustaw*, 53 (1946), item 300. On its basis, power was lost by a decree of 4 November 1944 and the act of 6 May 1945.

40 Ibid., 55 (1946), item 310. It applied to Germans – citizens of the Second Polish Republic, and non-Germans residing in 1945 in territories incorporated into the Third Reich.

41 Olejnik, *Zdrajcy*, 189-90.

42 Andrzej Pasek, *Przestępstwa okupacyjne w polskim prawie karnym 1944-1956* (Wrocław, 2002), 174.

closed, or rather re-classified, as they became places where people convicted by Special Commissions for Fraud Prevention and Economic Sabotage were sent.

The process of depriving individuals of citizenship took place by administrative decision, and by implementation of the Decree – as estimated by Leszek Olejnik – approximately 150,000 persons were deprived of citizenship. Some of them – over 30,000 – didn't leave Poland until 1950.[43] The actual end of the "Volksdeutsche problem" came on 20 July 1950 with the Act on "cancellation of sanctions and constraints in relation to citizens who declared their affiliation to the German nation".[44] The moment of submitting the bill to Sejm (Parliament), as well as the pace with which it went through (three readings and a commission session in half a day), resulted from making a deal two weeks earlier between the Polish People's Republic and the German Democratic Republic (East Germany). From the moment East Germany was established, a sea change occurred in the rhetoric of the Polish communist authorities on the Germans. One of the elements of the new approach was solving the Volksdeutsche problem.

Punishing War Criminals

It is obvious that a primary element of retributive justice was to punish criminals irrespective of the position they held in the Third Reich's apparatus of terror. The main legal act concerning these crimes was the Polish Committee of National Liberation's (PKWN's) Decree of 31 August 1944, which included not only the persons directly belonging to this apparatus, but also those who supported it (as informants or agents) or even without any kind of formal association with it, performed acts "for the benefit" of the enemy occupier (such as *szmalcowniks* – informants on Jews in hiding or their blackmailers or murderers). Therefore, the Decree also concerned Polish citizens who did not renounce their Polish national affinities.

A factor influencing the way of complying with the dispositions of the *August Decree* was the appointment of "Special Criminal Courts for Nazi -fascist criminals" (SSK) on the strength of the PKWN's Decree of 12 September 1944.[45] These were in fact martial courts: upon submission of a notification, the prosecutor had fourteen days to submit a bill of indictment that "does not require substantiation", and the court had forty-eight hours to deliver a

43 Olejnik, *Zdrajcy*, 197.
44 *Dziennik Ustaw*, 29 (1950), item 270.
45 *Dziennik Ustaw*, 4 (1944), item 21.

ruling. In addition, the one tier trial court mode was introduced (but with the right of appeal for clemency). The bench would consist of a professional judge and two jurors appointed by the quasi-local government authorities (National Assemblies). The Special Criminal Courts were dissolved by the Decree of 17 October 1946,[46] and their tasks were transferred to district courts. The reason for this was probably pursuit of the aim to standardise the court system, and also because objections were being voiced against some penalties for collaborators which were deemed to be insufficiently severe, and too many acquittals.

Another institution which was established to implement the *August Decree* was the Supreme National Tribunal (NTN – Najwyższy Trybunał Narodowy), created by the Decree of 22 January 1946.[47] Its task was both to try criminals deported to Poland by the Allies, and to try persons held responsible (by the Soviet-sponsored regime) for the Polish state's "turn towards fascism" before August 31, 1939 and the "September defeat" of 1939. These "crimes" were defined in a separate decree that was issued on the same day.[48] This second range of offences was directly connected to the political struggle that was in progress in Poland at the time, and was simply aimed at delegitimising the political elites of the Second Polish Republic. It was not connected in any way with the war and the course of the country's occupation that followed. Both the Decree and its execution, which was entrusted to the Supreme National Tribunal, was the expression of a propensity to take revenge not only in physical form (imprisoning or killing), but also by humiliating those put in the dock by casting them as criminals on a par with the Germans. The Supreme National Tribunal, however, did not examine even one such case. This task fell within the remit of the district courts, which actually examined such cases.

Although the Supreme National Tribunal was of special importance, it operated in similar manner to the Special Criminal Courts: its adjudication panel consisted of three professional judges and four jurors who were selected by the Homeland National Council (Krajowa Rada Narodowa – KRN) from among its delegate deputies, and operated on a one-instance-appeal procedure basis; thus, those who were convicted by it had no recourse to any higher court in quest of justice and could only apply for clemency. The Tribunal consisted only of prosecutors. But it was realized relatively quickly that in connection with the inflow of extradited criminals (by the end 1947 more

46 *Dziennik Ustaw*, 59 (1946), item 324. A decree became effective a month after its enacting.

47 *Dziennik Ustaw*, 5 (1946), item 45.

48 It was called the Act "on responsibility for the September defeat and the fascisization of the state" – *Dziennik Ustaw*, 5 (1946), item 46.

than 1,700 were transferred to Poland) that court would have to operate for many years in order to process so many cases. Hence, from October 1946, cases were transferred to the district courts, leaving only the most important cases to the Supreme National Tribunal. This court operated for just over two years and after the seventh trial, which ended on 5 July 1948, it simply vanished from the scene without any legal act being passed to rubber stamp this termination of activity. Alexander Prusin believes that "the authorities decided its time had been and gone" and its consignment to oblivion "was a sign that the communists had completely seized power in the country",[49] which meant that spectacular trials of war criminals were no longer needed for the new regime's legitimisation.

The third, this time extrajudicial, institution dealing with these kinds of cases was the Main Commission for Investigating German Crimes in Poland, set up in March 1945, though the appropriate decree was issued much later, on 10 November 1945.[50] The Polish Military Mission for Examination of German Crime was established in March 1945, to operate in the Allied-occupied zones of Germany and Austria. Its activity consisted in preparing extradition procedures, including determining the whereabouts of fugitive war criminals. The Main Commission carried out court investigations and collected incriminating materials substantiating requests for the extradition of suspects (its records contained approximately 7,500 cases),[51] but it also dealt with the criminals who remained at home. Both the Main Commission itself and the other ten district commissions conducted investigations for the purpose of facilitating the work of the prosecutors who could not cope with the volume of *August Decree*-based cases by themselves. The Commission outlived both the Special Criminal Courts and the Supreme National Tribunal,[52] but after 1949 its activity was significantly curtailed (for over ten years), due to both changes in Poland's German policy once East Germany came into existence, and the fact that, as from the end of 1948, extraditions became less frequent. The change of its name was symptomatic: it no longer dealt with "German crimes" but with "Nazi crimes".

Hence, the Polish investigation-judicial institutional system was formally extended to deal specifically with war criminals. The inaugural trial of the

49 Alexander V. Prusin, 'Polska Norymberga: Siedem procesów przez Najwyższym Trybunałem Narodowym, 1946-1948', *Zagłada Żydów: Studia i Materiały,* 9 (2013), 116-140, 139.

50 *Dziennik Ustaw*, 51 (1945), item 293.

51 Kobierska-Motas, *Ekstradycja*, 16.

52 It had undergone some modifications over the course of time but it still exists up to this day as part of the Institute of National Remembrance as a Main Commission for the Prosecution of Offences against the Polish Nation. Its director is, ex officio, the deputy of the General Prosecutor.

Special Criminal Courts, on the strength of the *August Decree*, was opened in Lublin at the end of October 1944. The defendant was a Volksdeutsch labour camp supervisor, who was sentenced to death. The most spectacular trial in 1944 was that of six staff members of the Majdanek concentration camp, which prompted the amendment of the Code of Criminal Procedure by adding a provision permitting the head of the Polish Committee of National Liberation's justice department to order public executions.[53] When the defendants were led into the court building in Majdanek, the citizens' militia (effectively, Poland's armed police throughout the communist era) and soldiers had to fire warning shots into the air to prevent a lynching by an incensed crowd of a few thousand that had gathered there. By the end of 1944, the Special Criminal Court prosecutors had examined more than a thousand cases and the courts delivered twenty-seven death sentences.[54]

There were seven most spectacular trials before the Supreme National Tribunal due to the high level of importance of the defendants. They were not only theatrical performances played to packed court houses, but they were also staged to the accompaniment of radio broadcasts, foreign journalists and foreign lawyers. No wonder that high judicial standards were keenly observed. For example, during the trial of Josef Bühler, the court had a hundred files for reference, and during the Auschwitz staff trial, more than two hundred witnesses were cross examined.[55] The first defendant to be brought before the Supreme National Tribunal was Artur Greiser, *Gauleiter* of Reichsgau Wartheland (the lands of western Poland incorporated directly into the Third Reich), whose trial ran from 21 June to 7 July 1946 in Poznań. He was sentenced to death and hanged in the presence of about 15,000 onlookers. Josef Bühler, head of government of the General Government, was last. One trial was of a collective nature: forty staff members of Auschwitz-Birkenau stood in the dock. Altogether, the Supreme National Tribunal judged forty-nine defendants further to which thirty-one death sentences were delivered and one person was acquitted. Thus, the Tribunal was not overworked; it rather set the tone, offered procedural guidelines and possible interpretations, and introduced new legal concepts into circulation, such as "criminal association". Some of the trials before the Special Criminal Courts or district courts (as from 1950 – regional courts) were clamorous and spectacular. These included undoubtedly the trial of fifteen staff members of Stutthof concentration camp (including five women; the defendants also included *kapos* – prisoners who served on the concentration camp staff) who

53 *Dziennik Ustaw*, 13 (1944), item 70.
54 Olejnik, *Zdrajcy*, 73.
55 Prusin, *Polska Norymberga*, 124.

were judged by the Gdańsk Special Criminal Court before the first trial of a defendant who was brought before the Supreme National Tribunal. Eleven sentences of death by hanging were delivered and publicly executed by five prisoners of this camp. The corpses were left to hang until the following day and, upon being cut down, they were taken to the Medical Academy.[56] War crime trials gradually began to decline as from 1950-1951, but were still quite systematically held until the mid-1960s. For instance one of the most famous criminals, Erich Koch, Oberpräsident of East Prussia, was deported to Poland in 1949, but his trial took place in 1959. The last person convicted under the *August Decree* was a Polish staff member of the extermination camp in Chełmno near Ner. The district court sentenced him to eight years in prison. This came in 2001.

In view of the lack of detailed tests it is difficult to precisely specify how many German criminals were sentenced on the strength of the *August Decree* as, under this Decree, people who worked for various institutions that functioned in German-occupied areas were also tried and sentenced. Leszek Kubicki estimated that, by 1960, "Polish courts convicted approximately at least 4,500 [Germans] for war crimes", which constitutes roughly a quarter of those put on trial.[57] Czesław Pilichowski believes there were almost 5,500 convictions,[58] which was supposed to constitute roughly a third of the total number of defendants. It is also still difficult to determine the quantitative structure of the penalties. Sentences in 1,803 criminal cases (fifty of which were neither Germans, nor *Volksdeutsche*), which were transferred to Poland by the Allies, may constitute a kind of sample: 193 persons (less than 11%) were sentenced to death, 204 for more than 10 years in prison, and 101 were acquitted.[59] As a matter of fact, though the law was severe, its application, seen through the optic of the sentences that were delivered, probably diverged from social expectations.

56 Dariusz Burczyk, 'Specjalny Sąd Karny w Gdańsku (1945-1946): Przyczynek do monografii', *Przegląd Archiwalny Instytutu Pamięci Narodowej*, 7 (2014), 289-312, 307-308. In January 1948, the MBP Prison Department issued a regulation "on the transfer of corpses of German war criminals for medical purposes" – Joanna Żelazko, 'Losy skazanych na karę śmierci przez Wojskowy Sąd Rejonowy w Łodzi', in Olgierd Ławrynowicz and Joanna Żelazko (eds), *Archeologia totalitaryzmu: Ślady represji 1939-1956* (Łódź, 2015), 251-75.

57 Leszek Kubicki, *Zbrodnie wojenne w świetle prawa polskiego* (Warsaw, 1963), 81. This estimate is based on the figures quoted in documents according to which convicts of German nationality constituted 39% in 1946 and 18% in 1949.

58 Czeslaw Pilichowski, *Badania i ściganie zbrodni hitlerowskich, 1944-1974* (Warsaw, 1975), 157.

59 Kobierska-Motas, *Ekstradycja*, 22. In the case of ninety-two people, the proceedings were discontinued for various reasons. Fifty-five people died before judgement was delivered.

Punishing of Collaborators

Differentiating between "active" and passive" collaboration seems reasonable (both legally and morally); it is, however, not possible to draw a distinct demarcation line, especially taking into consideration changes in time and regional differences. It is difficult to separate a "war crime" from a "crime of active collaboration", which frequently meant an accomplice (to varying degrees of culpability). I believe such collaboration entailed both the direct involvement of Polish citizens in the crimes of others and spontaneous – individual or collective – acts "for the benefit" of the enemy occupier. Research into the workings of the *August Decree* has determined neither the quantity of cases which the prosecutors worked on, nor the number of indictments. It is easiest to calculate convictions, but here, whereas Elżbieta Kobierska-Motas assumes that in 1944-1988 there were approximately 20,000 convictions,[60] Andrew Kornbluth estimates that in 1944-1960 various courts convicted 21,000 persons,[61] and according to Kubicki, approximately 18,000 people were sentenced in those years.[62] Thus, we may estimate that 13,500-16,500 of the sentenced individuals were "active collaborators" (the rest were Germans or non-Polish citizens). Attention may be drawn to the relatively high percentage of acquittals: according to Pasek, 30-40 % of the trials ended in acquittals,[63] and according to Kornbluth it was even 45 %.[64] If we assume that about 40 % of the total number of defendants were acquitted, and if we use this estimate as a basis for generalized assumptions, we could be talking about approximately 19,000-25,000 "active collaborators" who were put on trial. However, Kornbluth estimates that until 1960 at least 32,000 persons were tried in court (perhaps even 35,000 or so),[65] which means that this figure would have included some 28,000-30,000 "active collaborators". Of course the pre-trial stage covered significantly more people – according to Kobierska-Motas perhaps 80,000-100,000 – but the prosecutors very often

60 Ibid., 8. 3,954 judgements were delivered by the SSK, 48 by the NTN, 12, 427 by the District Militery Courts and approximately 3,500 by other courts of law.

61 Andrew Kornbluth, 'Jest wielu Kainów pośród nas: polski wymiar sprawiedliwości a Zagłada, 1944-1956', *Zagłada Żydów: Studia i Materiały*, 9 (2013), 157-172, 161.

62 Kubicki, *Zbrodnie*, 180.

63 Pasek, *Przestępstwa*, 173.

64 Kornbluth, *Jest wielu Kainów*, 159. Analyzing the situation in Silesia, Adam Dziurok draws attention to the relatively high percentage of acquittals. Out of 1,665 persons accused of affiliation to Nazi organizations, 770 were acquitted (approximately 46 %) (Dziurok, *Śląskie*, 204). Silesia was untypical, as of the approximately 3,500 people arrested in the period 1945-1946 under the *August Decree*, most were imprisoned for affiliations to Nazi organizations and only 839 (24 %) for "cooperation with the (German) occupier" (ibid., 106).

65 Kornbluth, *Jest wielu Kainów*, 157.

decided on discontinuing proceedings and many such cases were dismissed without judicial proceedings being opened.[66] All of this suggests that, in general, the judiciary acted relatively prudently and neither prosecutors nor judges buckled under public pressure. The net was cast fairly far and wide and many people were caught in it, but the catch was then sifted.[67] The same conclusion is also confirmed by the surviving data regarding the sentences: according to government statistics for 1947-1953, the court sentenced 9,300 persons on the basis of Article 1 of the *August Decree*, with 856 persons being sentenced to death,[68] which was approximately 9% of the total number of convictions, though, according to the Decree, this article made the death penalty obligatory. Kubicki draws attention to the fact that courts "applied extraordinarily lenient measures very frequently",[69] but, on the basis of what had been established previously, it should be assumed that in the first years of the *August Decree*'s regime, its sentences were more severe: there were 2,471 convictions in 1944-1946. They included six hundred and thirty-one death sentences (a quarter of their total) and there were twice as many more prison sentences of over ten years.[70] There were some surprisingly severe sentences. In November 1944, for example, the Lublin Special Criminal Court sentenced the chairman of the district court in Zamość under the German occupation to fifteen years in prison together with the loss of civil and civic rights for 10 years; the defendant was accused of applying for Volksdeutsch status, receiving German food coupons and having a higher salary.[71] Most trials took place in 1947-1948 (producing approximately 6,900 sentences in total), while the figures began to drop considerably as from 1952, going into rapid decline as from 1956.[72] The number of death sentences declined correspondingly.

Crimes described in the *August Decree* were not covered by the amnesties of 1945 and 1947. They were covered by the amnesty of 22 November 1952, but only those described in Articles 2 and 3 of the Decree which did not

66 Kobierska-Motas, *Ekstradycja*, 19. For instance, in Silesia, prosecutors discontinued approximately 3,000 cases out of approximately 11,000 that were submitted, with the same number being transferred to courts, and they did not even manage to examine approximately 4,300 cases by the time the Special Criminal Courts were liquidated (Dziurok, *Śląskie*, 176).

67 Also the number of those arrested by the security apparatus for "occupation period crimes" (in 1944-1956, approximately 39,600 were held for such crimes – IPN BU 0887/73, 2) significantly exceeded the number of persons tried before the courts.

68 Archiwum Akt Notowanych (AAN), Ministry of Justice, 9434, fol. 162-3.

69 Kubicki, *Zbrodnie*, 183. In Silesia approximately 70% of all convicts were given the minimum penalty of three years in prison (Dziurok, *Śląskie*, 205).

70 *Demokratyczny Przegląd Prawniczy*, 7 (1946), 47.

71 Olejnik, *Zdrajcy*, 73.

72 Kubicki, *Zbrodnie*, 181.

necessarily mean total remission because, for example, the death penalty was replaced by fifteen years in prison. In 1954-1955, as a result of the ending of imprisonment periods, and due to the departing from the policy of mass reprisals, a considerable number of sentenced individuals were released. As a result, on 1 January 1956, approximately 1,500 individuals sentenced under the *August Decree* were deemed to have served their sentences.[73] Another amnesty was proclaimed on 27 April 1956. It concerned, first of all, individuals sentenced in political trials. It also covered "active collaborators": it provided for the cancellation of planned proceedings, the termination of already initiated proceedings, and clemency. Pardons thereby became very frequent and, as Andrzej Pasek observed, by the beginning of 1957 "almost all persons sentenced for 'war transgressions' left their penitentiaries."[74] This act of pardon applied to most, but not all, because, for example, Erich Koch died in prison in Barczewo in 1986.

On the basis of Alina Skibińska's analysis of the District Court records in Kielce,[75] it may be concluded that the increase in the number of accusations (three hundred and forty-seven) was very significant: from participating in killing Jews and Poles, denunciations, participation in round-ups and blackmail, to "offensive statements concerning Poland and Poles" made by Germans. Studies show as many as forty-four percent of these crimes related to Poles who were victims of denunciations. This applied most often to neighbours and friends and sometimes even close family members (most often husbands)".[76] Apart from the wish to make good impressions on the authorities, avoiding penalties or obtaining payment, many denunciations were related to private differences, including marital conflicts. In the vast majority of trials (except for those before the Supreme National Tribunal), investigations and hearings were based on the testimonies of defendants and witnesses; very rarely did the prosecutors and courts have documentary evidence in the strict sense of the word. Many cases under the *August Decree* were commenced due to denunciations, which were, in some way, retributions for denunciations made in the wartime period.

As determined by Skibińska, thirty-six percent of the near on eight hundred trials that took place in all of the courts in Kielce put together concerned various kinds of crimes against Jews. Kornbluth, who examined the

73 Kornbluth, *Jest wielu Kainów*, 171.

74 Pasek, *Przestępstwa*, 178

75 Alina Skibińska, 'Dostali 10 lat, ale za co? Analiza motywacji sprawców zbrodni na Żydach na wsi kieleckiej w latach 1942-1944', in Barbara Engelking and Jan Grabowski (eds), *Zarys krajobrazu: Wieś polska wobec zagłady Żydów, 1942-1945* (Warsaw, 2011), 313-444.

76 Ibid., 322.

files of the District Court in Siedlce, determined that twenty-nine of the one hundred and thirty-one cases examined under the *August Decree* concerned crimes against Jews. In the District Court in Warsaw, one hundred and thirty-six of the three hundred and twenty examined cases concerned crimes against Jews.[77] The review of seventy-six court files made by Skibińska all over Poland suggests that seven percent of the cases belonged to this category,[78] but in some parts of Poland's post-war territory there simply was no problem in relations between Poles and Jews. In any case, crimes against Jews constituted a significant part of dealing with "active collaborators" whose scale still remains impossible to determine. Perhaps slightly surprisingly, among those charged with crimes against Jews, there were Jews themselves. According to Gabriel N. Finder and Alexander V. Prusin, at least forty-four were tried, thirty were sentenced of whom ten were sentenced to death, and ten were acquitted.[79]

Apart from crimes against Jews, further to the application of the *August Decree* in Silesia and the trials of the more prominent German criminals, no systematic research into the investigation and trial records related to this Decree has been made. In general, in Silesia there were many sentences for affiliations to Nazi organizations, while in what was the General Government, the more typical sentences were for extortions and blackmail by the *szmalcownicy* and numerous crimes committed by "navy blue police officers" and people with *Volksdeutsche* status who abused their power and status. Defendants also included district governors, mayors or civil servants and camp and prison staff. Due to the current status in research on these issues, it is not possible to produce the correct statistical typology of crimes and criminals related to the issue at hand. Therefore, a few miscellaneous examples are given below by way of illustrating the different forms of "active collaboration" and related judicial proceedings.

There were hearings which were not publicized when in progress and only became known many years later. One example was the trial that took place on 16-17 May 1949 before the District Court in Łomża which involved twenty-two defendants accused of murdering a few hundred Jewish inhabitants of Jedwabne on 10 July 1941. The sentences were quite severe: one person was sentenced to death (President Bierut, however, exercised his right

77 Kornbluth, *Jest wielu Kainów*, 158.

78 In six courts, the number of cases related to crimes against Jews exceeded 20% and in twelve courts, such crimes constituted 10-20% of all cases. I thank Ms. Skibińska for making the aggragate result of her archival inquiry in the IPN archive available to me.

79 Gabriel N. Finder and Alexander V. Prusin, 'Jewish Collaborators on Trial in Poland, 1944-1956', *Polin*, 20 (2007), 122-148, 128.

of clemency and reprieved him), eleven people were sentenced for eight to fifteen years in prison and ten were acquitted. There was no press information on the Jedwabne murders and the trial itself only became widely known more than half a century later. The case achieved fever pitch levels of public excitement in 2000 with the publication of Jan T. Gross's book *Neighbours*; the course of the investigations and proceedings regarding the case then and now have been documented in minute detail.[80] As regards publicity, the trials of journalists working in the German-controlled Polish gutter press (the so-called *gadzinówki*) were the reverse of the Łomża trial: local and national newspapers clamourously reported their course on a current basis, but soon this interest passed into oblivion. Based on Article 2 of the *August Decree*, eight such trials were held (including five collective trials) and forty-one people were tried.[81] Five of the defendants were acquitted (their proceedings were recognized by the court as "unethical rather than against the law"),[82] one was sentenced to death (the sentence was not carried out), three were sentenced to life imprisonment, nineteen for more than five years in prison (six of whom were sent down for more than ten years). However, in one of the trials, both life sentences were delivered *in absentia* because the defendants, Jan Emil Skiwski and Feliks Burdecki, managed to get out of Poland in January 1945, and then remained abroad. Skiwski, a famous essayist and literary critic, and Feliks Burdecki, a well-known journalist, were politically active collaborators until the last days of the German occupation. Some of those convicted in the early years of communist terror were later to enjoy successful literary careers, like Alfred Szklarski, who was the author of very interesting books for children and adolescents. The trial of the so-called *Goralenvolk* might also be worth mentioning. In an effort to fragment the Polish nation, the Germans hit upon the idea of inventing a new distinctive ethnic minority if not nationality, the highlanders of southern Poland known as Górale, whom they named *Goralenvolk*. Approximately 25,000 people subscribed to this farce for opportunistic reasons (i. e. eighteen percent of the highlander population).[83] In January 1945, several *Goralenvolk* activists, including their leader Wacław Krzeptowski, were sentenced to death by an underground court and executed, but some of the main organizers, Witalis

80 Paweł Machcewicz and Krzysztof Persak (eds), *Wokół Jedwabnego,* vol. 1-2, (Warsaw, 2002). In particular, vol. 1, 353-460 and vol. 2, 415-816 respectively.

81 Tadeusz Wolsza, 'Gadzinówki przed sądem Polski Ludowej (1946-1949)', *Polska 1944/45-1989: Studia i materiały,* 12 (2014), 349-81.

82 Zuzanna Schnepf, 'Losy pracowników niemieckiej gadzinówki "Nowy Kurier Warszawwski" w świetle powojennych procesów z dekretu sierpniowego', *Zagłada Żydów: Studia i materiały,* 2 (2006), 153.

83 Details can be found in the comprehensive monograph by Wojciech Szatkowski, *Goralenvolk: Historia zdrady* (Kraków, 2012).

Wieder and Henryk Szatkowski, managed to escape abroad. The issue was too well known and disturbing to apply the Decree of 4 November 1944 ("passive collaboration") alone. Six people were tried in public in November 1946. Wieder and Szatkowski were tried and sentenced to death *in absentia*. Krzeptowski and his deputy (and the President of the pre-war Highlanders Union) Józef Cukier, received fifteen year prison sentences apiece (Cukier was released by the amnesty of 1952), while others were sent down for three to five years. Ludwik Kalkstein and his wife Blanka Kaczorowska, a member of the Home Army's (ZWZ-AK) intelligence, were "classic" traitors. They were recruited by the Gestapo in 1942 and denounced a year later as people who were responsible for the arrest of the Home Army Commander-in-Chief Gen. Stefan Rowecki, pseudonym "Grot".[84] Their delegated executioners failed in their mission to carry out the death sentences that were delivered by the underground court. After the war, using false documents, they led normal lives: Kaczorowska was arrested in December 1952, and Kalkstein in August 1953. They were sentenced to life imprisonment in two separate trials held *in camera*, but they were relatively quickly released (Kaczorowska after six years, Kalkstein after twelve years) and allowed to leave Poland.

It is difficult to clearly specify whether sentencing some ten thousand "active collaborators" or more, and judging probably approximately 30,000, is a success or a failure in terms of the number of defendants and convictions. The significant percentage of acquittals and many cases of prosecutors refusing to press charges and putting defendants on trial could suggest that even collaboration of an "active" nature was to a great extent recognized to be situational and "acting for the benefit of the occupier" was often a one-off act motivated by the prospect of immediate profit rather than from a sense of political or ideological commitment to the enemy cause.

Dealing with the Occupation as an Excuse to Eliminate the Political Opponents of the New Regime

"Retaliatory regulations", including the Decrees of 31 August 1944 and 22 January 1946, became the basis (or rather pretext) for reprisals against Home Army soldiers and Polish Underground State officials. Piotr Kładoczny draws attention to the fact that this was facilitated by the introduction in 1946 of the provision stating that the *August Decree* also applied to "political associ-

84 The Gestapo agent who betrayed Gen. Rowecki was the brother-in-law of Kalkstein, Eugeniusz Świerczewski, a pre-war theatre critic. In June 1944 an underground court passed sentence on him.

ations that operated for the benefit of Germany"[85] and to "organizations" such as the National Armed Forces, "the AK (Home Army) leadership" and the Polish Government-in-Exile Delegate in Poland. This accorded both with the beliefs of Stalin and the Polish communist authorities, who stated many times over that the "London government" and its representatives at home acted to the benefit of the Germans and were even in collusion with them.[86] Hence, this Decree could be wielded against political opponents at will, and starting from 1948, prominent soldiers and activists of the Polish Underground State were accused of various crimes. According to Andrzej Pasek, three hundred people were sentenced this way.[87] Previous research shows that, for instance, in trials of counterintelligence units of the Polish Government-in-Exile Delegate's Office that took place in 1951-1952, twelve defendants were sentenced, nine of whom were sentenced to death (with five executions being carried out).[88] The course of one of these trials was publicized by way of a fake stenographic record published under the provocative title "Gestapo Allies. The trial of Kwasiborski and others". Under the *August Decree* Gen. Emil Fieldorf, pseudonym "Nil", the commander of the Diversion Section (Kedyw) of the Home Army High Command (KGAK), was sentenced to death and executed and Colonel Bolesław Kontrym simultaneously convicted under this Decree for the state's lurch towards fascism (ten years of imprisonment) and under the *August Decree* (sentenced to death and executed). Kazimierz Moczarski was arrested in 1945 under the Decree for committing "particularly dangerous crimes in the period of reconstruction of the state" and convicted to ten years in prison, but in 1952 he was sentenced to death under the *August Decree* (but reprieved). Reprisals were systematically carried out against persons connected with the Department of Internal Affairs of the Polish Government-in-Exile Delegate in Poland. As determined by Waldemar Grabowski, at least sixty-four persons employed by the Ministry were subjected to repressions.[89] Among those convicted were

85 Kładoczny, *Prawo*, 182.

86 For instance, during the conference in Tehran, Stalin said to his partners that the Polish government "has very good relations with Germany", and during the trial of sixteen leaders of the Polish Undserground State that was held in June 1945 in Moscow, they were accused of "preparing, together with the Germans, military operations against the USSR". In the central press organ of the Polish Communist Party (PPR) *Głos Ludu,* articles were published on "AK and NSZ criminals acting hand in hand with Nazis".

87 Pasek, *Przestępstwa*, 200-1.

88 For details see Janusz Wróbel and Marek Słojewski, 'Zbrodnie sądowe z oskarżenia o kolaborację z nazistami', in Witold Kulesza and Andrzej Rzepliński (eds), *Przestępstwa sędziów i prokuratorów w Polsce lat 1944-1956* (Warsaw, 2001), 85-108.

89 Waldemar Grabowski, *Polska tajna,* 530.

a pre-war prime minister and Marshal of the Sejm Kazimierz Świtalski and provincial governors Wacław Kostka-Biernacki and Stanisław Twardo. Under the Decree regarding the country's pre-war "fascistization", Mieczysław Siewierski, the prosecutor of the Supreme National Tribunal, was himself arrested and given a five year prison sentence.[90] Most trials, of both underground resistance activists and top pre-war government officials, civil servants, security service agents or members of the judiciary, were punished not for current anti-state activities, but out of political revenge in which legal instruments were created to enable punishment of war criminals and collaborators.

Reckonings with the Past: Wartime Social and Professional Organisations and Associations, Police and Prison Services

Apart from dealing with crimes based of *ad hoc* legislation ("retaliation regulations") or on political decisions of the great powers (the expulsion of Germans), crimes were also dealt with at a professional level without the direct involvement of the justice system. Some of them – concerning professions of public trust – were conducted on the basis of the existing legislation or temporary regulations, but the majority took place within the corporations, under their own internal disciplinary procedures. Apart from research into the thespian community, there have been no monographs on crimes brought to book in these walks of life, and therefore this description can only be cursory.

One of the professions subject to positive vetting was that of judges, that is, those who wanted to remain in practice. Applications were examined both from the standpoint of pre-war professional requirements (education, experience, etc.) and on the basis of "information on the attitude of the candidate at time of war and occupation".[91] Anna Machnikowska, the author of a comprehensive study on the judiciary, believes that attitudes during the German occupation period "became the basis for a small number of negative decisions" and only "eleven to nineteen people" were dismissed from their posts.[92] I did not manage to establish whether prosecutors were vetted

90 Prusin, *Polska Norymberga*, 139. Of course, Siewierski was not convicted for holding a position in the Supreme National Tribunal, but because he was prosecutor in the Second Polish Republic.

91 Anna Machnikowska, *Wymiar sprawiedliwości w Polsce w latach 1944-1950* (Gdańsk, 2008), 155.

92 Ibid. One of them was the already mentioned chairman of the District Court of Zamość.

in a similar manner. Attorneys were vetted on the basis of the Decree of 24 May 1945 "on temporary regulations supplementing the corporate bar structure law".[93] Article 8 of this Decree provided for the appointment of vetting commissions – at the attorney's chambers and a central commission (appeal commission) at the Polish Bar Council (NRA – Naczelna Rada Adwokacka) – that was to check "whether the behaviour of the candidate, especially during the period of German occupation, was unblemished in civil, social and professional matters". The field commissions, save for delegates of district bar councils, also had representatives of the Minister of Justice and presidents of competent appeal courts in their number, and spokesmen of bar chambers and of appeal court prosecutors also took part in their proceedings. Only the Chief Vetting Commission was composed solely of attorneys. All persons registered on the attorneys' list had to complete an eleven-point questionnaire.[94] It seems that the vetting was conducted quite meticulously, but I did not manage to determine its final results. Marcin Zaborski believes that 500-1,000 attorneys were vetted, and only between a dozen or so and no more than one hundred failed to get clearance.[95]

The professional groups that had to undergo fairly rigorous selection processes included "navy blue police" and "Prison Guard" officers. The Prime Minister appointed a six-man Rehabilitation-Qualification Commission on 29 August 1945. It consisted of Citizen Militia officers, employees of the Presidium of the Council of Ministers, and an MBP (Ministerstwo Bezpieczeństwa Publicznego – Ministry of Public Security) delegate.[96] Each officer of one of these services who wanted to work in state institutions or local government was obliged to present a certificate issued by a vetting committee. Systematic vetting commenced in January 1946, and assessments were made on the basis of individual applications for "rehabilitation" and detailed checks by the UB (Urząd Bezpieczeństwa – Security Office) and the Citizen Militia. In the event of detecting evidence of the applicant having collaborated with the Germans, the case would be transferred to the prosecutor's office. In the absence of reservations, the Commission would issue a certificate permitting the applicant's admission to public service. By October

93 *Dziennik Ustaw*, 25 (1945), item 146.

94 AAN, Ministry of Justice, 5848, fol. 16-7.

95 Marcin Zaborski, 'Pierwsza weryfikacja adwokatów w Polsce Ludowej (1945-1950)', *Palestra*, 11-2 (2015), 215. Details were not specified by Lech Krzyżanowski, who in conclusion to a comprehensive article merely wrote that in Silesia "only a few" persons were excluded – 'Weryfikacja adwokatów śląskich po II wojnie światowej', *Annales Universitatis Paedagogicae Cracoviensis: Studia Politologica*, 10 (2013), 97-112, 112.

96 A detailed analysis of commission work – see Robert Litwiński, 'Komisja rehabilitacyjno-kwalifikacyjna dla byłych policjantów (1946-1952)', *Dzieje Najnowsze*, 1 (2004), 117-133.

1947, 8,247 applications were examined, of which five hundred and fifty six (6.5%) were denied rehabilitation certificates,[97] mostly due to acts described in the *August Decree*. Among the nine hundred and ninety-eight applications submitted by Prison Guard officers, only thirty-three (i. e. 3.3%) applications were rejected.[98] Commission decisions were issued on the strength of the Decree of 22 October 1947 "on the acceptability of rehabilitation of persons employed in the police and prison guard services during the German occupation".[99] Piotr Majer, a leading expert on the history of the Polish police in the 20th century, believes that the vetting procedures did not have a repressive character, and even perceives there to have been an "attempt to protect the entire professional environment against the ["August"] Decree."[100] The relatively small number of clearance failures could be the result of the relatively lenient approach characterizing many proceedings against persons suspected of collaboration. A specific, rigorous vetting process began in 1950 with mass investigations and inquiries by the MBP against former police officers and employees of the prison service of the Second Polish Republic. The legal basis for this was the Decree regarding the country's pre-war "fascistization", and previous positive vetting decisions of the commission were of no consequence.[101]

Systematic *ex officio* vetting also covered other professional groups. However, there are no related studies. The high rate of looking into people's pasts is illustrated by the following example. In autumn 1945, an eighteen year old from a small town, who wanted to study, but also took into consideration the need to start working in some state institution, before sallying forth "to conquer the world" applied for and obtained a document from his local municipal council. His clearance certificate stated: "The bearer of this document is not German or Volksdeutsch and did not engage in hostile actions against the Polish people." Local communes and other local government authorities probably issued thousands of such documents. This one, bearing traces of the zeal with which applicants for what were regarded as more sensitive positions were scrutinized, survived only because that young man was to become the world-famous philosopher Leszek Kołakowski.[102]

97 Ibid., 125.
98 Ibid.
99 Aleksander Kochański, *Polska 1944-1991. Informator historyczny*, vol. 1, (Warsaw, 1996), 212.
100 Piotr Majer, *Milicja Obywatelska 1944-1957* (Olsztyn, 2004), 171. Apart from vetting, routine personnel "purges" took place in MO.
101 Piotr Majer 'Okupacyjne i powojenne losy polskich policjantów', *Przegląd Policyjny*, 1-2 (1999), 102-120, 118.
102 Wiesław Chudoba, *Leszek Kołakowski. Kronika życia i dzieła* (Warsaw, 2014), 38.

An interesting sphere of dealing with crime was what could be described as "civil dealing with crime". It started in autumn 1944 when in the weekly magazine *Odrodzenie* (Rebirth) issued in Lublin, which had only just been liberated from the Germans, a polemic on the attitudes of actors during the German occupation was given prominence. One of the authors expressed full understanding for persons acting in licenced theatres big and small, while another author believed that the boycott of these productions ordered by the Secret Theatre Council (the underground Trade Union of Artists of Polish Scenes, ZASP – Związek Zawodowy Artystów Scen Polskich) was justified and needed. The problem of dealing with particular attitudes was quickly taken up by "numerous authors' centres" where "improvised vetting commissions sprang up".[103] By June 1945, four hundred and seventy-one persons were vetted (including auxiliary employees) of whom one hundred and twenty-two were punished. Some penalties were quite severe: e.g. bans on acting in big city theatres, in films or in participating in radio programmes, bans on publicising the names of actors starring in given productions on posters and in programmes (which were replaced by three asterisks), and fines. Only in several cases was the penalty expulsion from the given professional association, which meant being struck off and consigned to professional perdition. Vetting procedures evoked great emotions, with luminaries expressing their opinions (Stefan Jaracz, among others, was a supporter of the purge, while Leon Schiller was against), various aspects of these processes were discussed at conventions, tens of articles were published and their full quantitative results remain to be determined. It is known, however, that in the period 1945-1946, the Central Court which, as a second instance body, approved the verdicts of local courts, reviewed seven hundred and fifty cases and penalised one hundred and thirty-one individuals,[104] while in 1947 a further six hundred and sixty persons were vetted, of whom one hundred and seven were punished.[105] Many well-known artists and actors were punished which, of course, heated up the atmosphere, but even the most radical supporters of these vetting procedures laid down their arms in 1948. In a sense, the grand finale in the process of "purging" the profession came on 18 November 1948 in a judgement on five actors who played in *Heimkehr*, an anti-Polish propaganda film: one person was sentenced *in absentia* to life imprisonment, one to twelve years, one to five, and two to three years in prison.

103 Edward Krasiński: 'Działalność komisji weryfikacyjnych ZASP 1945-1949', *Pamiętnik Teatralny*, 1/4 (1997), 36-112, 45.
104 Instytut Teatralny, Archive, ZASP ZG 3/171.
105 Krasiński, *Działalność*, 89.

Since the problem was related not just to the thespian community itself, its administrative authorities got involved as well: on 1 March 1945 the Ministry of Culture and Art sent "guidelines on the grounds, criteria and methods of vetting artists which should be used by Artistic Associations and Artists' Trade Unions in order to purge them from undesirable individuals discredited in the days of occupation".[106] This document recommended the creation of vetting commissions which, in the case of "any charges" would transfer the case to the given organisation's disciplinary committee, and if the disciplinary committee decided that the vetted person could have committed the crimes described in the *August Decree*, it was obliged to transfer the case to the Special Criminal Court prosecutor. I did not manage to determine whether the Ministry's guidelines were adopted by all artists' trade unions. Certainly the Association of Polish Musicians adopted them, but I have not seen the relevant documents for others like the Polish Visual Artists Union (ZPAP- Związek Zawodowy Polskich Artystów Plastyków). The guidelines were applied by the Union of Polish Booksellers (ZKP – Związek Księgarzy Polskich) which was amalgamated with the Polish Association of Book Publishers. A vetting committee was appointed on 25 September 1945, during the ZKP's general meeting. It was to "clear the atmosphere from charges, accusations and rumours and remove from the booksellers' community all individuals who, as human beings and as Poles, should face justified charges related to their ethics and morality."[107] The commission published in *Przegląd Księgarski* (Booksellers' Review) the names of people to be vetted and in this vetting process all booksellers and publishers had to fill out a multipage questionnaire, in which they were asked, among others, "how did they obtain their permit for pursuing the occupation of a bookseller" and "whether they maintained relations with German bookseller companies".[108] This vetting lasted until the end of 1949. Of the 1,242 persons who applied for clearance, three failed to obtain a clean bill of health. Thus, a lot of time and money were wasted.

The procedures of the Polish Writers Union (ZLP – Związek Literatów Polskich), one of the most important creative associations, were slightly different. Although during the convention that took place at the turn of August and September 1945, a vetting committee was appointed, it was not to examine the attitudes of its members during the German occupation, but rather to sift out new potential undesirable members. The convention condemned

106 Full text – *Pamiętnik Teatralny*, 1-4 (1997), 117-9.

107 AAN, Association of Polish booksellers, 163, 14, fol.1. All main commission materials have been preserved.

108 Ibid., 15, fol. 154.

a few "writer – collaborators",[109] including the aforementioned Burdecki and Skiwski, as well as Stanisław Wasilewski, who, however, was acquitted by the Special Criminal Court. Later, by the decision of the Main Board, two persons were accused of writing for the German propaganda gutter press, but no one seemed to be interested in vetting them, and they were not made objects of condemnatory speeches during the conventions. The procedures of "the Republic of Poland's Union of Journalists" (ZZDRP – Związek Zawodowy Dziennikarzy RP) were more rigourous. It did not appoint a special commission, but a commission to review its members (approximately nine hundred persons) and to issue opinions on the candidates. Regarding of information about charges related to war time, it was obliged to refer those cases to its disciplinary committees. Information on eight proceedings can be found in the partially preserved materials of the disciplinary committee of the Warsaw Branch: in two cases the defendants were acquitted, five persons were found guilty and suspended for two to threee years, and one was expelled from the Union.[110] One could get the impression that the disciplinary committee was quite lenient towards defendants, as in the case of Tadeusz Pągowski, who was punished by colleagues with a three year suspension, and the journalists of the German propaganda rag *Nowy Kurier Warszawski* were sentenced to seven years in prison.[111] The authorities of the trade union did not ignore the problem, but during its convention in November 1947, it was stated that "Polish journalists, except for a few individuals, despite having to bear great sacrifices and reprisals, rejected collaboration with the occupying authorities."[112]

The disciplinary bodies of political parties and trade unions, as well as veteran organizations such as the Association of Participants of the Struggle for the Freedom of Spain in the years 1936-1939 (the Dąbrowski Brigade), the Association of Fighters for Democracy against Fascism and Nazi Invasion, and the Polish Association of Former Political Prisoners of Nazi Prisons and Concentration Camps took a lively interest in the examination of social and individual attitudes during the war and under German occupation. Some appointed special vetting committees, others left that task to their statutory

109 Dom Literatury, Archiwum ZZLP, 6, fol. 55.

110 AAN, ZZDRP, 21, *passim*. Materials concerning these proceedings were handed over in 1948 to a unit of the Ministry of Justice dealing with collaboration.

111 Judgment of court of law, see Wolsza, *Gadzinówki*, 368; disciplinary committee, see AAN, ZZDRP, 22, fol. 25. Attitudes towards positively vetted individuals found reflection in the decision of one of the members of the Union who was suspended for a year. The lenient penalty was substantiated with the fact that "the cooperation of the accused […] with the '7 Dni' weekly was caused by vanity and thoughtlessness […] therefore a lenient penalty was imposed", AAN, ZZDRP, 21, fol. 13.

112 *Prasa Polska*, 6-7 (1947), 19.

disciplinary committees. The largest number of cases seemed to be examined by the Dąbrowski Brigade ex-servicemen: from 28 November 1947 to 31 August 1949 (when all veteran associations were rolled up into one Society of Fighters for Freedom and Democracy – ZBOWID), forty-two individuals were found guilty, thirty-three of whom were expelled from this Asociation, while the remainder were reprimanded.[113]

Owing to the Holocaust and the dramatic situation of Jews after the war, the activities of the Social Court of the Central Committee of Jews in Poland (SS CKŻP, Sąd Społeczny przy Centralnym Komitecie Żydów w Polsce), which has been the subject of extensive monograph studies,[114] was of peculiar importance. The Court was appointed in October 1946 in reaction to the Appeal Court in Kraków upholding the acquittal by the Special Criminal Court of Michał Weichert who, in 1944, was sentenced to death for collaboration by the Jewish Combat Organization (ŻOB).[115] The presence of Jewish police officers or Gestapo collaborators was frequently of interest to the Jewish (and, for that matter, Polish) community: "We must have the courage to admit that our nation does not consist solely of innocent victims," wrote the publicist "Dos Naje Lebn".[116] The Court imposed moral rather than material penalties: from reprimand, through suspension of member rights for three years, to "exclusion from the Jewish community". The first trial was held in November 1946. The defendant was Szapsel ("Szapsio") Rotholc, a rank and file Jewish police officer in the Warsaw Ghetto, but he aroused interest primarily because he represented Poland sixteen times in boxing. The gallery of the Hall of Justice was packed to the rafters with public and press alike, so the course of the trial was very widely reported. One of the twenty-eight witnesses was the captain of the Polish Boxing Association, who testified in favour of his team-mate. Most testimonies, however, were unfavourable to the famous boxer, who was punished with a two-year suspension of his membership of the association. In response to an appeal for a reprieve by the Head Office of Physical Culture, Rotholc was amnestied. Weichert's trial, held in November-December 1949, during which fourteen witnesses for the prosecution (including three deputies) and fifteen witnesses for the defence were heard, was a real battle.[117] It ended with the "stigmatization" of the

113 AAN, Związek Uczestników Walk o Wolność Hiszpanii, 260/IV/1, fol. 5.

114 Andrzej Żbikowski, *Sąd Społeczny w CKŻP: Wojenne rozliczenia społeczności żydowskiej w Polsce* (Warsaw, 2014). Consideration must be given to detailed studies on dealing with the collaboration of Jews in a broad aspect, such as Laura Jockusch and Gabreil Finder (eds), *Jewish Honor Courts: Revenge, Retribution, and Reconciliation in Europe and Israel after the Holocaust* (Detroit, 2015).

115 Żbikowski, *Sąd Społeczny w CKŻP*, 34-5.

116 Ibid., 33.

117 Description of the case – ibid., 133-58.

defendant, which corresponded to being sentenced. The sentence differed from the one delivered by the Special Criminal Court. This was not the only case resulting in a similar discrepancy. By December 1949, the Social Court examined seventy-eight cases, delivered twenty-nine judgments, and discontinued or suspended the remaining cases.[118] In the conclusion of his monograph, Żbikowski states that "Jews, who escaped the German death machine, were not able to develop transparent rules on acceptable behaviour during the occupation period, the breach of which would have resulted in penalisation."[119] It seems that this basic assumption, at least to some extent, also applies to the Poles and the problem of "civil dealing with crimes".

Perhaps that was the basis of the Ministry of Justice commencing work in the spring of 1948 on the Act "on responsibility for breaching the duty of loyalty during the war of 1939-1945",[120] and establishing an Authorized Representative for Tracking Down Collaborators (*sic*). The position was held by prosecutor Arnold Gubiński. In its substantiation, it was written that save for already existing legal standards "the other category of acts […] is related to ethics of a special kind: the sort that regulates relations between individual citizens and their Country and Nation" and those who in failing to uphold this standard sufficiently visibly thereby caused "public despondency" and weakened the "national spirit of resistance".[121] The notion of "common vetting" instead of that conducted by particular associations and trade unions was justified by the authors of the project by reference to the "small measure of authority" enjoyed by various commissions and professional disciplinary committees, which resulted from both the atmosphere that prevailed in some of those organisations (mostly due to cronyism or professional rivalry) and from their judgments, which "did not reach beyond the given organisation". As a result, "it could not be regarded as the expression of condemnation by society as a whole."

In order to obtain such an effect, a five-person Social Vetting Tribunal was to be created,[122] appointed by the President of the Republic of Poland. The Court would not have to uphold judgments delivered by social organisations; indeed, it could even undermine them, and act as a review body. The penalties were supposed to be "social revilement", and in cases of lesser

118 Ibid., 39-40.
119 Ibid., 160.
120 Sparse documentation, but containing main documents concerning this initiative – see AAN. Ministry of Justice, 5066, *passim*. Initially this was to take the form of a decree, not of an act.
121 Ibid., fol. 37.
122 Subsequent drafts of the act – ibid., Criminal Code. 19-24, 25-8 and 50-8. In one of the versions – Citizens' Vetting Tribunal.

importance "social reprimand". They were to be accompanied by restricted membership rights and stigmatisation "in organized social life" (in case of a "reprimand" up to five years, in the event of "revilement" from three to ten years). As an additional penalty, the court could impose a financial penalty of up to PLN 1,000,000, or even permanently expel a member from its society. Sentences were to be final with no right of appeal. It was not only the additional sentences which were severe. "Restricted participation rights" was also a very serious penalty. It was supposed to correspond to a ban from working for the justice system, holding state and local administration offices, board membership of social organisations, and moreover, "loss of civic rights". The project was discussed at a meeting of the Consultative Commission on 8 May 1948, which, apart from officials of the Ministry of Justice (together with prosecutor Gubiński), was attended by representatives of KCZZ (Komisja Centralna Związków Zawodowych – Central Commission of Trade Unions) and CKŻP (Centralny Komitet Żydów w Polsce – Central Jewish Committee). The documentation I had access to ends on the text of the amended project and I did not manage to determine any further actions relating to this document. In any case, the Act was not adopted. In the first half of 1948, the vetting activities of various organizations were still very intense, so perhaps they related to the drive to impose a consistent approach in dealing with the problem. The motive, however, could have been the desire of the communist party to have top-down control in dealing with crime and wielding it for political purposes. In any case, both the draft of this act and its substantiation supplement the picture of "civil reckonings with crime", which was a social phenomenon of considerable range, directly concerning thousands of people of various professions and status. Famous people held "at gunpoint" evoked mass emotional responses, both out of genuine concern and sympathy and out of simple cravings for sensation.

Summary

The great assortment of crimes committed in the Nazi era brought unimaginable problems when their perpetrators were called to account. The problem ranged from punishing German criminals to censuring those who failed to observe the principles of "civil loyalty". The experience made a deep impact on both social attitudes and the activities of many state institutions and associations of various types. It seems that dealing with crimes committed in war and during the occupation in Poland was quite moderate in scope and form for Poles, as compared to "foreigners" (Germans) who were treated much more radically, albeit rarely indiscriminately. The question of the reasons for

this situation arises. The following hypothesis may be proposed in answer to this question: the introduction of a new political system in Poland, with the participation, indeed, under the orders of the Soviet Union, brought in train political conflict – first and foremost the fight for sovereignty – which pushed all other conflicts into the background. Perhaps the desire to take revenge on "foreigners"(Germans) waned as the focus of hatred shifted eastwards and large numbers of Poles (of course: not all of them) began to see the Soviet soldier or the Polish communist as the foreign intruder; indeed, collaborators or even Volksdeutschers were more familiar and no longer a threat, while members of the independence-minded resistance and partisans had other fish to fry. In such countries as France or Italy, bloody reckonings – épuration sauvage – were unleashed, while in Poland the focus was on dramatic self-defence against a seemingly invincible second enemy.

The main wave of dealing with crimes lasted to 1950-1951 or so, when the Germans were expelled, the Volksdeutsch rehabilitated, the number of defendants sentenced under the *August Decree* declined significantly,[123] official purges by way of vetting in the professions came to an end and social courts ceased to operate. Around that time, the key phase of the country's Sovietisation called "construction of the basis for socialism" commenced which, incidentally, coincided with the "hot phase" of the Cold War. Dealing with crimes both in other communist countries and in Western Europe ceased too. Dealing with crime ended, but perhaps Keith Lowe was right when he wrote "Revenge was an integral element on which the foundations of postwar Europe were laid."[124] In any case, revenge was exacted on those who committed crimes, those who betrayed their country, those who murdered or denounced their neighbours out of greed, and those who compromised themselves like Judas, for thirty pieces of silver.

123 According to estimates, up to 80% of the judgments under the *August Decree* were delivered by 1950 – Pasek, *Przestępstwa*, 172-3.

124 Keith Lowe, *Dziki kontynent: Europa po II wojnie światowej* (Poznań, 2012), 112.

Władysław Bułhak

In Search of Political Justice, 1939-2000: From the Main Commission for the Investigation of German Crimes in Poland to the Institute of National Remembrance

As Poland fell in September 1939, the Polish Government-in-Exile (initially based in Paris, and when France fell in 1940, in London) wasted no time in considering measures that fit into the category of "retributive justice". War crimes committed in Nazi- and Soviet-occupied Polish territory were systematically documented. Witness testimonies and information on war criminals were collected without respite, the clear intention being to make the criminals face justice after the war. Complementary efforts were made on an international scale by publishing collections of documents and witness accounts in the form of so-called *white books*. The legal basis for the future investigation and prosecution of war crimes was also provided by decree of the Polish President-in-Exile of 30 March 1943 "on criminal liability for war crimes". This was one of the earliest documents issued by the authorities of a state whose citizens were being subjected by an invader to repression on an unimaginable scale. Further to the efforts that were made to fit these Polish measures into the general ethos of the United Nations, the Office for the Prosecution of War Crime, established by the Polish Government-in-Exile in November 1943, which was to become the Polish section of the United Nations War Crimes Commission (UNWCC), prepared documentation for about a thousand such cases. As Łukasz Jasiński observes in his contribution to this vol-

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ume, one of the factors driving the concept of post-war retribution against Germany was the Polish-Czechoslovak cooperation that had started in exile.[1]

At the same time, the inherent features of "retributive justice" as generally understood began to veer towards a consciously selective approach to the definition itself of politically motivated mass atrocities (including genocide) and the legal and political assessment of such crimes committed by various regimes and their duly appointed representatives. It was also clear for lawyers and politicians who represented Western democracies that it was impossible to try or even reveal Stalinist crimes committed during the war and in the course of subjugating East-Central Europe. Thus, the cynical rule of 'victor's justice', the norm since Antiquity, remained intact (at least until the beginning of the Cold War). In practice, this meant that early post-war investigations and prosecutions were restricted to Nazi German crimes. This approach was given clearest expression at the Nuremberg Trials in regard to the Katyn Massacre. In Poland, by then a Soviet satellite due to the peace settlement, the violation of what was effectively an officially imposed conspiracy of silence was seen as a political crime liable to imprisonment. Thus, until the collapse of the Soviet bloc in 1989-1990, Lady Justice had at least one hand tied behind her back when doing her job.[2] This should be borne in mind when discussing the origin and activity of the Main Commission for the Examination of German Crimes in Poland, whose direct successor is the Commission for the Prosecution of Crimes against the Polish Nation of the present-day Institute of National Remembrance (IPN). The Main Commission was established by the Soviet-sponsored Polish Committee of National Liberation (PKWN) and the Home National Council (KRN), the Soviet Union's puppet authorities in Poland. The PKWN issued the *August Decree* of 31 August 1944, a legislative act which is crucial to our reflections, and which is even partially binding today. Conceived as a devise for prosecuting

1 See Elżbieta Kobierska-Motas, *Ekstradycja przestępców wojennych do Polski z czterech stref okupacyjnych Niemiec: 1946-1950*, vol. 1, (Warsaw, 1991), 13-4, 21-9, 37-52; Krzysztof Persak, *Coming to Terms with the Wartime Past: The Institute of National Remembrance and its Research on the Jedwabne Case* (paper delivered at the international conference "Confronting History: The Historical Commisions of Inquiry", Yad Vashem, Jerusalem, 29 December–1 January 2002/2003), 1-2 (in collaboration with Tomasz Łabuszewski); see also the essays by Marek Kornat and Łukasz Jasiński in this volume.

2 Przemysław Gasztold-Seń, 'Siła przeciw prawdzie: Represje aparatu bezpieczeństwa PRL wobec osób kwestionujących oficjalną wersję Zbrodni Katyńskiej', in Sławomir Kalbarczyk (ed), *Zbrodnia katyńska w kręgu prawdy i kłamstwa* (Warsaw, 2010), 132-53; see also the essays by Andrzej Paczkowski and Marek Kornat in this volume.

German war criminals, it soon turned out to be a useful weapon in the struggle with the anti-communist resistance.[3]

The Main Commission and a dozen or so subordinate district commissions were formed in November 1945. This meant having to standardise various institutions that had sprung up spontaneously earlier and had already commenced documenting crimes (e. g. those perpetrated at Auschwitz-Birkenau). Miscellaneous evidence and witness testimonies to be used in show trials, the most famous one being that of the Majdanek camp staff in Lublin, were collected as from the summer of 1944. By decree of 10 November 1945, the Main Commission was to be part of the Ministry of Justice, and the minister himself was its chairman *ex officio*. Its task was to carry out formal investigations into the crimes committed by the Germans on Polish territory in 1939-1945 (regardless of the victims' nationality) and against Polish citizens, both in the country and abroad. Another primary task of the Main Commission and the district commissions was to comprehensively document German crimes, e. g. by securing any surviving archives and data enabling identification of perpetrators. Witness statements and accounts were collected, findings at execution site exhumations and mass graves were recorded. These activities were to abide by the Polish Code of Criminal Procedure to ensure that the collected evidence could be used in forthcoming trials (which was a different approach to what was evident in various grass root initiatives for documenting crimes).

The Main Commission was also responsible for disseminating information on what was discovered and established both in Poland and abroad, and for cooperating with foreign institutions of similar character and compatible goals. The latter could take the form of assistance in investigating analogous cases by foreign institutions, but the primary concern was to extradite to Poland perpetrators of crimes committed on Polish soil, to bring in witnesses from abroad, and to secure evidence such as Hans Frank's diaries, or reports by Nazi officers such as Stroop and Katzman who were responsible, respectively, for the destruction of the Warsaw Ghetto and the "solution of the Jewish question in Galicia". It might be added that much of this evidence is still kept in the IPN archives.[4]

3 Piotr Kładoczny, *Prawo jako narzędzie represji w Polsce Ludowej (1944-1956): Prawna analiza przestępstw przeciwko państwu* (Warsaw, 2004), 176-86, 206; see also the essays by Andrzej Paczkowski and Adam Dziurok in this volume.

4 Dziennik Ustaw [Journal of Laws – JoL) 1945/51/293: Dekret [Prezydium PKWN] z dnia 10 listopada 1945 r. o Głównej Komisji i Okręgowych Komisjach Badania Zbrodni Niemieckich w Polsce; see also Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich 1944-1974* (Warsaw, 1975), 3-6, 13; Łukasz Jasiński, 'Okręgowa Komisja Badania Zbrodni Hitlerowskich w Gdańsku w latach 1965-1989: Geneza i działalność', *Pamięć i sprawiedliwość*, 1 (2014), 245,-74, 245-6; Bogdan Musial, 'NS-Kriegsverbrecher vor

The then incumbent Minister of Justice, Henryk Świątkowski, became the *ex officio* Chairman of the Commission, and its presidium included the Minister of Foreign Affairs (Wincenty Rzymowski), the Minister of Education (Czesław Wycech), Zofia Nałkowska, a well-known writer, and the renowned historians and lawyers Stanisław Płoski, Zygmunt Wojciechowski, Stanisław Batawia, and Jan Sehn. To all intents and purposes, the work of the Commission was supervised by its Secretary General, Janusz Gumkowski. These people held views that were sometimes very far removed from communism, but they agreed that dealing with the experience of the German occupation, including the legal and judicial procedures for doing so, was a matter of national interest and priority. Paradoxically, the national desire to deal with the issue of German Nazis and their (actual or imaginary) collaborators was of paramount importance to the communists as well because they were well aware of being seen as mandated to assume the reins of power by the Soviet Union, and without any democratic mandate or broader standing in society. Though they had previously been rather unfavourably inclined towards the idea of the nation as opposed to such concepts as "class" and "the people", responding to the universal cry for retribution was their chance to align themselves with the nation. This also contributed to the position of the new government on the international front. The two final aspects, related to legitimisation, are highlighted in the articles by Joanna Lubecka and Paulina Gulińska-Jurgiel published in this volume. Though it was the exception rather than the rule, there was a successful attempt to maintain some continuity of effort to bring the Germans to "retributive justice" between the Polish Government-in-Exile, which otherwise was definitely anti-communist, and the similar activities in Poland ruled by the communists. Relevant documentation was therefore handed to Mieczysław Szerer, the representative of the Warsaw government at the UNWCC. A portion of the specialist personnel, including Tadeusz Cyprian, was also "transferred" in the name of a higher priority.[5]

The Main Commission resorted to a number of measures in Germany once it was occupied by the victorious powers. For example, it gathered material evidence, primarily concerning Hans Frank (the former Gover-

polnischen Gerichten', *Vierteljahrshefte für Zeitgeschichte*, 47/1 (1999), 25-56, 26-30; Persak, *Coming to Terms*, 3; see also the essays by Andrzej Paczkowski and Paulina Gulińska-Jurgiel in this volume.

5 See Czesław Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich 1944-1974* (Warsaw, 1975), 6-7; Jasiński, 'Okręgowa Komisja Badania Zbrodni Hitlerowskich w Gdańsku', 246; Kładoczny, *Prawo jako narzędzie represji w Polsce Ludowej*, 206; see also the essays by Andrzej Paczkowski, Joanna Lubecka, and Paulina Gulińska-Jurgiel in this volume.

nor-General in Kraków) for his trial before the International Tribunal in Nuremberg. What is more, we should take note of the relatively effective measures aimed at finding the perpetrators employed by the foreign delegation of the Main Commission, as this was the de facto status of the Polish Military Mission for Investigation of War Crimes in Europe (active from 1946 to 1950). The search was made easier due to the files concerning war criminals as prepared by the Main Commission on the basis of a nationwide survey in Poland. That is probably why of the 4,000 or so applications for extradition received in the American Zone of Occupation, about thirty per cent concerned Poland. This was the largest group of extradited persons in terms of their number and percentage. Somewhat fewer than four hundred people were extradited from the British Zone. Relatively small groups, counted in no more than double figures, were brought over from the French and Soviet Zones. The group of defendants made to stand before Polish courts (primarily the Supreme National Tribunal, which was specially appointed for this purpose) included high-ranking members of the administration of the General Government (GG) such as Ludwig Fischer, Kurt von Burgsdorf and Joseph Bühler; the heads of SS and police of the individual GG districts: Jakob Sporrenberg, Otto Paul Geibel, Herbert Böttcher, and Willi von Haase; *Gauleiter* (in Polish lands incorporated into the Reich): Arthur Greiser and Albert Forster, and later Erich Koch; commandants of German concentration and death camps located on Polish soil: Amon Göth or Rudolf Hoess; and, finally, such persons as the infamous Jürgen Stroop, who was responsible for the destruction of the Warsaw ghetto.[6]

The political developments in Germany and its de facto division into two separate states, the Federal Republic of Germany (FRG, popularly known as West Germany) and the German Democratic Republic (GDR, popularly known as East Germany), and particularly the establishment of the latter state, resulted in the reorientation of the Soviet Union's policy towards the German issue, which had a knock-on effect on the approach of its satellite government in Warsaw. This also impacted on the way "retributive justice" was administered in Poland. The first result of the establishment of the "fraternal" GDR was that the Main Commission for the Examination

6 Kobierska-Motas, *Ekstradycja przestępców wojennych do Polski*, vol. 1, 52, 90, 154; vol. 2, 10-1, 17; Persak, *Coming to terms,* 3-4; Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich,* 11; Leszek Gondek, *Polskie misje wojskowe 1945-1949: Polityczno-prawne, ekonomiczne i wojskowe problemy likwidacji skutków wojny na obszarze okupowanych Niemiec* (Warsaw, 1981), 25-48; Lisa Yavnai, 'U.S. Army War Crimes Trials in Germany: 1945-1947', in Patricia Heberer and Jürgen Matthäus (eds), *Atrocities on Trial: Historical Perspectives on the Politics of Prosecuting War Crimes* (Lincoln-London, 2008), 61; Musial, 'NS-Kriegsverbrecher vor polnischen Gerichten', 30, 38-9; see also the essay by Andrzej Paczkowski in this volume.

of German Crimes in Poland was renamed the Main Commission for the Examination of Nazi Crimes in Poland (the emphasis now being on Nazis rather than Germans); this was accompanied by phasing out its district delegations (initially with Kraków being an exception). At the same time, the above-mentioned Polish Military Mission for Investigation of War Crimes in Europe also became defunct.[7] In 1950-1963, the Main Commission was a small organisational unit at the Ministry of Justice. Its staff was actually reduced to Janusz Gumkowski, Szymon Datner, and Kazimierz Leszczyński (who was seen as their leading expert on the given documentation). What is more, this did not go unnoticed by the West German intelligence agency, the BND, which had its reasons for taking an interest in the matter. This concerns an agency that consisted of "professionals" who earned their experience in the corresponding bodies of the Third Reich, as is implied e. g. in the methodical calculations of Christoph Rass.[8]

The situation regarding the inactive Main Commission began to change in the early 1960s. There were numerous causes for that change, but all of them related to "retributive justice". First, there were problems of a legal and political nature. The limitation period for crimes committed during World War II, initially set in Germany to May 1965, remorselessly drew nigh. Though, due to various pressures, not least international, and the change of mood in Germany itself, it was later postponed and eventually abolished, this could not have been predicted earlier. In that situation, priority was given to organized legal assistance for those representatives of the German justice system, such as Fritz Bauer, the Prosecutor General of Hesse, who strove to bring to justice war criminals as they came to light, despite the instinctive internal resistance and sometimes even conscious obstruction on the part of the judicial apparatus. The scale of the necessary help was quite significant, as it entailed seventy various prosecution offices and courts of law all over West Germany. The most famous example was the case of some Auschwitz staff members in 1963-1965 before the court in Frankfurt am Main which involved Polish witnesses and documents collected by the Main Commission. Comprehensive support was also provided to such West German institutions as the Central Office of the State Justice Administrations for the Investigation of National

7 Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich,* 15; Gondek, *Polskie misje wojskowe*, 46-7.

8 "Hinweise zur Gliederung und Arbeitsweise der Hauptkommission für Naziverbrechen in Warschau", Archiv für Christlich-Demokratische Politik [ACDP], St. Augustin, 01-70-103/2, Nachlass Hans Globke, [BND] Meldung aus Warschau, 18. December 1962; Christoph Rass, *Leben und Legende: Das Sozialprofil eines Geheimdienstes*, in Jost Dülffer, Klaus-Dietmar Henke, Wolfgang Krieger, and Rolf-Dieter Müller (eds), *Die Geschichte der Organisation Gehlen und des BND 1945-1968: Umrisse und Einblicke*, *Dokumentation der Tagung am 2. Dezember 2013*, Studien Nr. 2 (Berlin, 2013), 24-38.

Socialist Crimes in Ludwigsburg (*Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen*) whose representatives obtained over a hundred microfilms from the collection of the Central Commission in 1965-1966.[9]

This help given to West Germany by Poland, which was real and reasonable in every respect, had a hidden political agenda, both in regard of international and Polish politics. The issue of investigating and prosecuting German crimes perfectly fitted the pseudo-patriotic slogans bandied about by the so-called "Partisan" faction in the ruling regime, led by Gen. Mieczysław Moczar, a Deputy Minister, and then Minister of Internal Affairs in the Polish People's Republic. It was no coincidence that the person appointed as the Director of the Main Commission was Czesław Pilichowski, a close collaborator of Gen. Moczar's, who actually remained its director until his death in 1984. At that time, his institution became a highly politicized body at the government's (and the secret service's) disposal. This manifested itself in its involvement in the "anti-Zionist" campaign that peaked in 1967-1968.[10] It suffices to note that the first Chairman of the Central Commission, Janusz Gumkowski, was erased from the official history of the investigation and prosecution of Nazi crimes in Poland. This can be deemed to have been a symbolic punishment. Gumkowski unfortunately wrote a note on Auschwitz victims for a Polish encyclopaedia, which stated that the victims were predominantly Jewish, which his successor, Pilichowski, decried as "anti-Polish". This example shows how "retributive justice" was interlaced with the wrong-headed "politics of commemoration" or even "historical policy", to which historical truth fell victim.[11]

The reactivation of the Main Commission and the extension of its activity also had an international dimension to it, primarily due to the complicated relations between Moscow, Warsaw, Bonn, and East Berlin. The improving political, economic and military position of West Germany in Europe gave rise to concerns in the Soviet Union and its satellite states, primarily Poland under Gomułka and East Germany under Ulbricht. This, however, was justified to some extent due to the state doctrine adopted by West Ger-

9 Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich*, 116-7.

10 See for example archival materials on "operational case" codenamed "Warta" relating to the cooperation of the Main Commission with the Polish, Soviet and East-German secret services, Archiwum Instytutu Pamięci Narodowej [Archive of the Institute of National Remembrance] (AIPN), Warsaw, 0236/183 (particularly vol. 6, 28, and 49).

11 See Jonathan Heuner, *Auschwitz, Poland, and the Politics of Commemoration, 1945-1979* (Athens [Ohio], 2003), 173; Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich*, 83.

many at that time.[12] Back then, Moscow decided to take advantage of the fact that many former officers of the Third Reich were employed at various levels of the West German state apparatus. The mass propaganda campaign, whose targets included President Heinrich Lübke and close collaborators of Chancellor Adenauer – Theodor Oberländer and Hans Globke – as well as members of the Bundeswehr's high command and "expellee circles", involved the entire state apparatuses of the Communist countries: their diplomatic services, mass media, justice systems, security apparatuses and intelligence agencies. This campaign was orchestrated by the KGB and the Soviet Ministry of Foreign Affairs. Particular tasks were distributed among the Soviet satellite states, primarily East Germany, Poland, and Czechoslovakia. The reactivation and reconstruction of the Main Commission for the Examination of Nazi Crimes in Poland and its regional structures was indubitably a part of this process.[13] Similarly orchestrated were events such as the high-profile conference organized (officially by the Polish Ministry of Foreign Affairs, but practically by Gen. Moczar's people) in Jabłonna Palace near Warsaw in the autumn of 1966, to which former press correspondents who had reported on the Nuremberg Trials were invited. Among them were such outstanding journalists as Lord Russell of Liverpool, Sefton Delmer, Dominique Auclères, Didier Lazard and Frie Knepflé. The aim of this assembly was to warn the world about the rebirth of Nazism (in West Germany, of course).[14]

12 See for example Wanda Jarząbek, 'Zwischen Eiszeit und Verständigungssuche: Der Standpunkt der polnischen Regierung in den Beziehungen mit der BRD in den Jahren 1956-1981', in Mike Schmitzner and Katarzyna Stokłosa (eds), *Partner oder Kontrahenten? Deutsch-polische Nachbarschaft im Jahrhundert der Diktaturen* (Berlin, 2008), 137-55; see also *idem.*, '"Ulbricht-Doktrin" oder "Gomułka-Doktrin"? Das Bemühen der Volksrepublik Polen um eine geschlossene Politik des kommunistischen Blocks gegenüber der westdeutschen Ostpolitik 1966/67', *Zeitschrift für Ostmitteleuropaforschung*, 55/1 (2006), 79-115.

13 'Wyciąg z notatki z przeprowadzonych rozmów w dniu 16 i 17 czerwca 1960 r. w sprawie koordynacji przedsięwzięć wywiadowczych KBP ZSRR i MSW PRL', Warsaw, 27 December 1960, Warsaw, AIPN, 0296/111, vol. 2, 13pdf; 'Notatka dotycząca podsumowania i dalszej współpracy między KBP przy Radzie Ministrów ZSRR i MSW PRL', Warsaw, 3 July, 1963, AIPN, Warsaw, 0639/108, vol. 3, 382 pdf; 'Wspólna Informacja KGB i MSZ ZSRR dotycząca akcji kompromitowania byłych nazistowskich generałów zajmujących kierownicze stanowiska w Bundeswehrze we współpracy z władzami Czechosłowacji', *Moscow,* 2-4 June 1964, Russian State Archive of Contemporary History (RGANI), 3-16-484, k. 121-124; see also Annette Weinke, *Die Verfolgung von NS-Tätern im geteilten Deutschland: Vergangenheitsbewältigungen 1949-1969 oder: Eine deutsch-deutsche Beziehungsgeschichte im Kalten Krieg* (Paderborn, 2002), 209-24; Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich*, 141.

14 'Notatka Biura Prasy KC PZPR w sprawie spotkania byłych korespondentów norymberskich', Warsaw, 21 November 1966, The Archives of Modern Records (AAN), 237/XIX-83, 129-35.

What we see here is a real confluence of paradoxes that constituted a kind of international theatre of "political justice", which simultaneously illustrated the principle that the end justifies the means, even if various actors had different objectives which were more or less just. "National Communists" who struggled for power and whose tendencies can be described as nationalist institutionally supported the investigation and prosecution of Nazi crimes at Moscow's orders and in cooperation with East Berlin and Prague, while in West Germany itself, this cause was principally supported by leftists, who were supported by ecclesiastical (primarily Protestant) and Jewish circles. Simultaneously, a significant proportion of the West German government circles, including their secret services with the BND at the forefront, labelled that activity a "defamation campaign" or "Polish propaganda against the Federal Republic", and against people who distinguished themselves in dealing with the Nazi past, e. g. the Prosecutor-General of Hesse, Fritz Bauer, who were besmirched in documents said to be "falsified" by Eastern Bloc countries coordinated by Moscow.[15] The BND itself provided information on the plan to publish a debunking book on the behind-the-scenes politics in West Germany under the telling title "The Fourth Reich" (which was to be done by a famous Italian leftist publisher, Giangiacomo Feltrinelli), whose intended author was Thomas Harlan, the son of the Nazi film director Veit Harlan, and a friend of the Hesse Prosecutor, Bauer; the book was to be based largely on documents provided by the Polish Main Commission.[16]

Despite all the political circumstances described above, the reinforcement of the role of the Main Commission under a "strong man", i. e. Czesław Pilichowski, had its advantages. This was the period when its position in the Polish People's Republic peaked. The network of District Commissions was reactivated, and their local delegations were established. In 1965-1989, i. e. during Pilichowski's seemingly interminable period in office as its chairman, as well as that of his successor, Kazimierz Kąkol, 10,000 investigations were carried out, which involved the examination of thousands of witnesses, whose accounts were recorded for the benefit of posterity. In the mid-1960s, efforts were made to arrange the vast archive of the Main Commission. Putting in order the precious collection of card indexes containing information on

15 'Angebliche Äußerungen des hessischen Generalstaatsanwalts Bauer', ACDP, St. Augustin, 01-70-091/3, Nachlass Hans Globke, [BND to Ludwig Friedmann], 6 July 1963; see also Stefanie Waske, *Mehr Liaison als Kontrolle: Die Kontrolle des BND durch Parlament und Regierung 1955-1978* (Wiesbaden, 2009), 75.

16 'Neuer Agitationsverstoß gegen die Bundesrepublik von Warschau in Vorbereitung', ACDP, St. Augustin, 01-70-103/2, Nachlass Hans Globke, [BND] Meldung aus Warschau, 8 January 1963; Krzysztof Persak, *Sprawa Henryka Hollanda* (Warsaw, 2006), 318.

over a million people, including those of 31,000 perpetrators who were still at large and unpunished at that time, was of particular importance. Files of numerous court cases held pursuant to the *August Decree,* and a large collection of microfilms concerning German crimes committed on Polish soil that came from archives all over the world (primarily the USA, the USSR, and the former GDR), were added to the collection. The specialist library (which included a rich collection of German language literature) was extended. Thus, the Main Commission became one of the centres of research on Nazi crimes of global importance, and several hundred researchers and journalists both from Poland and abroad visited it each year. The Main Commission itself also conducted documentation and research work largely based on the project team method and took advantage of the regional network. This has been the method used by the research section of the IPN to date. For Polish historical research, which focuses more on individual achievements, this was, and still is, something of a novelty. Specific teams worked on a broad spectrum of topics ranging from methodology to collecting specific documentation on a given type of crime, quoting specific examples and raising legal issues. The results of that work were published in the Main Commission's books and journals. Main Commission employees also participated in organising a number of academic and educational conferences, both at the international and the national level.[17]

In the 1970s, the Gomułka-Brandt agreement helped improve Polish-West German relations, which was part of the broader détente process and West Germany's *Ostpolitik*. At that time, dealing with war criminals and the attendant court proceedings, at least partially, lost its political edge. Consequently, the issue dropped in the political pecking order of priorities for the Polish People's Republic's government. While it should be stressed that public interest in the issue was unabating because it needed no stimulation from the regime's propaganda machine, there is no doubt that the position of the Main Commission, which remained the primary enforcer of "retributive justice", gradually declined in the 1970s and 1980s. An attempt at reversing that trend was the new act on the Main Commission, which was passed in 1984 on the initiative of Pilichowski, with the name of the institution being changed. The further goal was to make the work of the commission a national issue and to shift the centre of gravity from issues related to "retributive justice" to the state's "politics of commemoration". From then on, the official name of the institution was the Main Commission for the Examination of Nazi Crimes in Poland – Institute of National Remembrance (GK-IPN) and, in

17 Pilichowski, *Badanie i Ściganie Zbrodni Hitlerowskich*, 37, 69-76; Persak, *Coming to Terms,* 5.

fact, the latter part of the name was used increasingly often. It was also no accident that Pilichowski, who died that year, was replaced by Kazimierz Kąkol, another politician associated with the "national communist" faction in the ruling camp of the Polish People's Republic. In his youth, Kąkol served as an officer of the non-Communist Home Army and was an insurgent in the Warsaw Uprising, but later, he became a member of the Central Committee of the Polish United Workers' Party involved in the "anti-Zionist" campaign of 1968, and held the important post of Minister-Director at the Office for Religious Affairs in a Catholic country ruled by the Communists. However, he was not exclusively a Communist politician; he was also a lawyer and a political scientist specialising in the issue of "retributive justice" and the author of several books on the trials of Nazi criminals in West Germany. Kąkol was the Director of GK-IPN from 1985 until the decay and collapse of the Communist system in Poland in 1989. In the early period of transition from communism to capitalism (1989-1990), GK-IPN was briefly run by Józef Musioł, who had once been Pilichowski's deputy and was associated with the so-called Democratic Party, a pseudo-liberal satellite party in the previous regime's system of government, which at that time (ineffectively) tried to find a place for itself in the new Poland.[18]

The collapse of the Soviet system also made it possible to extend the activity of the Main Commission, primarily in the field of research and documentation, and then prosecution, of communist crimes (initially, most often referred to as "Stalinist crimes"). In practice, this started in 1989-1990 with the participation of individual GK-IPN researchers seeking to fill the "blank spots" in contemporary history, which included not only the infamous Soviet Katyn Massacre, but also Poles serving in the Wehrmacht or the prickly issue of Polish-Ukrainian relations. Paradoxically, all similar actions by an institution that was part of the justice system (which also includes "retributive" and "historical justice") were conducted virtually in a legal void for nearly two years. Finally, in April 1991, the Polish parliament (on the motion tabled by the Citizens' Parliamentary Club, i. e. the former opposition and the Polish Peasant Party) officially extended the scope of the activity of the Main Commission and simultaneously renamed it the Commission for Examination of Crimes against the Polish Nation – Institute of National Remembrance (GK-IPN). Apart from prosecuting Nazi crimes as before, its tasks now extended to prosecuting Stalinist crimes, i. e. crimes committed by the Communist authorities up to the end of 1956. As can be observed, the

18 JoL 1984/21/98. Ustawa z dnia 6 kwietnia 1984 r. o Głównej Komisji Badania Zbrodni Hitlerowskich w Polsce – Instytucie Pamięci Narodowej; see also Izabella Borowicz and Maria Pilarska (eds), *Główna Komisja Badania Zbrodni przeciwko Narodowi Polskiemu* (Warsaw, 1997), 1-62.

competences of the primary Polish organ of "political justice" was extended gradually and with caution, just like the Polish democratic reforms as a whole, which tended to be gradual and cautious; it should be remembered that it was the "Contract Parliament" which passed the new law, a body only partly constituted by free election. The first free elections in post-war Poland were held in October 1991.[19]

Lady Justice began to recover her full remit of power as from the early 1990s, but, at least for a while longer, to the exclusion of the political and judicial crimes of 1956-1989. In 1991-1998, about 800 investigations into Stalinist crimes were initiated. They concerned Soviet crimes against Polish citizens in 1939-1945, such as the deportations from territories incorporated into the Soviet Union, the persecution of the resistance movement members in the Grodno area, or the fate of Poles in Soviet labour camps (e.g. in Vorkuta). At that time, the priority tasks of the Main Commission included drawing up lists of places where victims of the Communist terror of 1944-1956 were buried, as based on a resolution adopted by Parliament in 1996. However, the greatest controversies were aroused by the trials, or attempted trials of persons manning the apparatus of repression of the 1950s, including judicial repression, which also encompassed Stalinist crimes. The most famous trials at that time were those of Adam Humer (an officer at the Ministry of Public Security), Salomon Morel (former commandant of the camp for Germans in Świętochłowice, Silesia), and, *in absentia,* Helena Wolińska-Brus (a Stalinist prosecutor). There were also cases that were important for local communities, e.g. the case of a resident of the village of Balinka, murdered by officers of the Augustów District Security Office in January 1945. But the atrocities committed during the German occupation had not been forgotten, as illustrated by the case of Alfons Goetzfried, a former SS soldier, who had participated in the mass execution of Jews in Majdanek concentration camp and was arrested in 1998 in cooperation with GK-IPN.[20]

Unfortunately, GK-IPN, which had been established in a totally different historical period, employed rather elderly people focused on judicial proce-

19 JoL 1991/45/195, Ustawa z dnia 4 kwietnia 1991 r. o zmianie ustawy o Głównej Komisji Badania Zbrodni Hitlerowskich w Polsce – Instytucie Pamięci Narodowej; Jasiński, 'Okręgowa Komisja Badania Zbrodni Hitlerowskich w Gdańsku', 271; Persak, *Coming to terms*, 5; Adam Bogumił Dec [Director of GK-IPN], 'W sprawie zbrodni – komunikat', *Gazeta Wyborcza*, 270, (November 19, 1993), 13.

20 Persak, *Coming to Terms,* 5-6; Waldemar Mońkiewicz, 'Świadkowie zbrodni UB w Augustowie', *Gazeta Wyborcza*, 299 (December 21, 1992), 11; 'Ruch oporu na Grodzieńszczyznie', *Gazeta Wyborcza*, 228 (September 29, 1993), 12; 'Kraj w skrócie', *Gazeta Wyborcza*, 56 (March 7, 1998), 4; *Informacja o działalności Instytutu Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu w okresie od 1lipca 2000 r. do 30 czerwca 2001* (Warsaw, 2001), 58.

dures. Polish politics had moved on and the Institute had a hard time finding its rightful place in the debate on contemporary history, which was heading towards one of its boiling points at that time. The academic and documentary publications of greatest importance to the public, particularly those concerning communist crimes, were written or edited by independent journalists or academics at the Polish Academy of Sciences (PAN) who were often associated informally with GK-IPN. The GK-IPN Directors, Adam Bogumił Dec followed by Ryszard Walczak, both of whom had come from local prosecution offices, failed to make much of an impact in terms of building up the Institute's renown. That changed with the arrival of Witold Kulesza, a man of vibrant and dynamic personality, who took office in 1998. Kulesza, a lawyer by profession, was a man with a mission; he was able to reach a broader audience and tell them about "retributive justice", of which he was a passionate proponent. He was particularly involved in the international dispute on the applicability of the legal category of genocide to Soviet atrocities and the promotion of the research findings of the German historian Dieter Schenk, on the Nazi crimes committed in Gdańsk and Pomerania.[21]

Kulesza, together with another famous lawyer, Andrzej Rzepliński, and the historian Andrzej Paczkowski, was one of the main authors and propagators of the new general act that was to cover the most important aspects of "retributive justice" with regard to 20th century Polish history. It was possible to pass that act after the centre-right coalition of parties stemming from the Solidarity movement took power in 1997. Its authors' idea was to combine the old GK-IPN (with its then current staff and archive) with a new institution inspired by the Gauck Institute in Germany (Gauck being the Federal Commissioner for the Records of the State Security Service of the former German Democratic Republic, the BStU). The task of the latter was to take over the archives of the Polish Communist secret services, impose systematic order on them, and make them available to the public at large, not least to the victims of the past system who were interested in learning the background details of the repression they suffered. It took the form of the Office for the Preservation and Dissemination of Archival Records (*Biuro Udostępniania i Archiwizacji Dokumentów*); in a word, that is the modern IPN Archive. What is more, the decision was taken to establish the Public Education Office (responsible for historical education and academic research), which is a purely Polish idea. This Office, headed by Paweł Machcewicz, soon became the flagship of the new structure, which originally consisted of the three above-

21 Witold Kulesza, 'Zbrodnia katyńska jako akt ludobójstwa: Geneza pojęcia', in Sławomir Kalbarczyk (ed), *Zbrodnia katyńska w kręgu prawdy i kłamstwa* (Warsaw, 2010), 52-67.

mentioned thematic divisions, whose full name was to be: the Institute of National Remembrance – Main Commission for the Prosecution of Crimes against the Polish Nation (IPN). The act defined the notion of "Communist crime" anew, and this term was supposed to cover deeds committed with malice aforethought by the officers of the Communist authorities from 17 September 1939 (when the Red Army entered eastern Poland) to 31 July 1990 (when the security apparatus of the Polish People's Republic was disbanded).[22] The relevant act was passed in December 1998. Pursuant to its provisions, the dispensation of "retributive justice" in the strict sense of the word would become the task (and it still is the task) of the Main Commission for the Prosecution of Crimes against the Polish Nation, which is a part of IPN and is a direct successor to the former GK (which functioned in various forms since 1945) in regard of investigation and prosecution. However, it should be emphasized that pursuant to the existing legislation, the GK's director and its subordinate prosecutors report to the Prosecutor-General, an office held *ex officio* by the incumbent Minister of Justice. The primary task of the IPN was to furnish them with an appropriate budget and organisational environment.[23]

The IPN Act came into force nearly two years after being passed. Its first President, Leon Kieres, a lawyer, was elected after prolonged political disputes. Very soon, the Institute he was to manage had to deal with a number of major cases directly related to "retributive justice" which, understandably, exercised public emotions. The most controversial of these was the resounding debate on the Jewish massacre in Jedwabne and other nearby settlements. IPN also took over the investigation of the Katyn Massacre, which is still a sticking point in Polish-Russian relations.[24] An attempt at describing the scope of responsibilities and the achievements of the Commission in the field of "retributive justice", and the many years it took to organise its work, was made by the then GK Director, Dariusz Gabriel, and his co-workers in 2009-2010. There was a review of about 5,300 cases concerning Nazi crimes which had been initiated by the GK and its district delegates. Since its very inception, 1,500 investigations were resumed, the vast majority of which

22 Antoni Dudek, *Instytut: Osobista historia IPN*, (Warsaw, 2011), passim; see also (the not fully convincing account in) Dorota Koczwańska-Kalita, *(Nie)chciane dziecko III RP: Instytut Pamięci Narodowej 2000-2010* (Cracow, 2015), passim.

23 *USTAWA z dnia 18 grudnia 1998 r. o Instytucie Pamięci Narodowej – Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu*, tekst ujednolicony według stanu na dzień 16 czerwca 2016 r. [Act of 18 December 1998 on the Institute of National Remebrance – Commission for the Persecution of Crimes Against the Polish Nation, consolidated text as of 16th June 2016], http://www.ipn.gov.pl/pl/o-ipn/ustawa/24216,Ustawa.html [2 November 2016].

24 Persak, *Coming to Terms*, 6-19.

were finally concluded. The extensive material which the authorized IPN representative presented in February 2010 at a conference in Prague was organized in celebration of the Czech Presidency of the European Union. They described the work by the GK prosecutors in all its aspects, legal, theoretical and practical, which involved the presentation of statistical data and examples of ongoing (or concluded) investigations in particular categories of crimes. At that time, there were seven hundred ongoing cases of communist crimes, three hundred cases of Nazi crimes, and forty cases of other crimes against humanity and war crimes (primarily concerning the perpetrators of the Volhynia Massacre of Poles by Ukrainian nationalists in 1943-1944). As far as pending and newly registered cases are concerned, similar proportions have been maintained. As of late 2015, GK prosecutors have been handling: five hundred sixty-one first category crimes that need to be concluded, three hundred thirteen second category cases, and twenty-three third category crimes, in which they have registered six hundred, three hundred seventy-two, and nineteen cases respectively.[25]

Nowadays, it seems indisputable that the terms of the subsequent Presidents (Leon Kieres, Janusz Kurtyka, and Łukasz Kamiński, now succeeded by Jarosław Szarek) resulted in IPN becoming the principal Polish institution dealing with contemporary history. Its most striking areas of concern are the totalitarian crimes relating to 20th century Polish history, the collection of archival documents, maintaining vestiges of national remembrance, and promoting knowledge of the Polish experience in dealing with recent history on the international scene. Due to two amendments to the IPN Act (passed in 2006 and 2016), the scope of its tasks was extended to judicial vetting procedures, the exhumation and identification of victims of atrocities, and care for commemorative sites such as monuments and war cemeteries. All this can be seen as "retributive justice" in its various guises; its administration, both in judicial practice and its symbolic sphere, will remain the primary mission of IPN.

25 'Country Report: Poland', delivered by Władysław Bułhak at the international conference: *Crimes of the Communist Regimes: An assessment by historians and legal experts*, Prague 24-26 February (Prague, 2011), 141-52; *Instytut Pamięci Narodowej – Komisja Ścigania Zbrodni przeciwko Narodowi Polskiemu: Informacja o działalności. 1 stycznia – 31 grudnia 2015* (Warsaw, 2016), 176-7.

Paulina Gulińska-Jurgiel

Post-War Reckonings: Political Justice and Transitional Justice in the Theory and Practice of the Main Commission for Investigation of German Crimes in Poland in 1945

Introduction

This article is more a *tour d'horizon* of the research that still needs to be done on reckonings with war crimes and crimes against humanity committed by Poland's invaders between 1939 and 1945. Emphasis is put on analysing the early months of the Main Commission for Investigation of German Crimes, from spring to winter 1945, as it tried to find its feet.[1] This is an intentionally selected moment of transition – beginning with the appointment of the Main Commission while military operations were still in progress in Poland, and ending with the Decree of November 1945, promulgated some six months into peacetime, which created the legal basis for the Commission's existence. This was a period of chaos and uncertainty as the incoming Soviet-sponsored regime sought general social acceptance, recognition of its legitimacy and consolidation. It was only with the post-1989 collapse of the Soviet bloc that this complex process of transition from Nazi subjugation to communist dictatorship could be closely scrutinized by historians and sociologists without censorship.[2]

1 This name for the Commission prevailed until 1949 when, after the establishment of the German Democratic Republic, it was changed to the Main Commission for the Examination of Hitlerite Crimes in Poland (vgl. den Beitrag von Łukasz Jasiński). The name was subsequently changed several more times in the following decades. Further in this article the name of the Commission shall be abbreviated to the Main Commission.

2 Inter alia, Jacek Chrobaczyński, *Konteksty przełomu 1944-1945*: *Społeczeństwo wobec wojennych rozstrzygnięć: Postawy – zachowania – nastroje* (Kraków, 2015); Andrzej

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The main empirical bases for this analysis are the archival documents of the Main Commission dated 1945.[3] In line with the thematic-methodological assumptions of this volume, the early months of the Main Commission's existence are examined from the vantage point of *political justice* and *transitional justice*. Therefore, this article seeks to propose an acceptable conceptual apparatus to be employed in assessing the Commission's activities. The first part of this text is devoted to an analysis of the fundamental terms: *political* and *transitional justice*.

The second, and main, part of the text consists of an empirical analysis of the Main Commission's operations. At the end, the question must be posed whether the Main Commission's activities accorded with the concepts of *political justice* or *transitional justice*. The answer is surely contingent on the degree to which the analytical sweep and limitations can be ascertained in regard of direct post-war reckonings with Nazi crimes in Poland. Two aspects have a particular part to play in this analysis. The first is the definition and role of law in the activities of the Main Commission. It should be emphasized that it is not about analysing national acts of retributive justice, but rather about the Main Commission's interpretation and application of the law, both in theory and practice.[4] The main concerns are not only the 'hard' aspects of this reckoning, but also its 'soft' features on the model proposed by Annette Weinke in one of her numerous works on reckonings with the Nazi regime directly after the war in West Germany.[5] To paraphrase her thesis, one

Leon Sowa, *Historia polityczna Polski 1944-1991* (Kraków, 2011), 17-127; Marcin Zaremba, *Wielka Trwoga. Polska 1944-1947* (Kraków, 2012); still compulsory reading: Krystyna Kersten, *The Establishment of Communist Rule in Poland, 1943-1948* (Berkeley, 1991), first edition 1984.

3 These are both documents collected in the archive of the Institute of National Remembrance in Warsaw and protocols from source data concerning the Main Commission and its field branches in 1945, prepared in the mid-1990s by Mieczysław Motas (ed), *Główna Komisja Badania Zbrodni Niemieckich w Polsce i jej oddziały terenowe w 1945 roku* (Warsaw, 1995).

4 Since the literature on this subject is quite substantial (including several articles in this volume which deal with them quite thoroughly), they shall only be briefly mentioned in this article. See Włodzimierz Borodziej, '"Hitleristische Verbrechen": Die Ahndung deutscher Kriegs- und Besatzungsverbrechen in Polen', in Norbert Frei (ed), *Transnationale Vergangenheitspolitik: Der Umgang mit deutschen Kriegsverbrechen in Europa nach dem Zweiten Weltkrieg* (Göttingen, 2006), 399-437.

5 More details are given below, but for a basic understanding, certain elements should be mentioned, such as the personal composition of participation in the disensation of the judicial processes, the mental capacity of participants who addressed the topic, the political-historical constellation, and the spirit of the times. See Annette Weinke, '"Allierter Angriff auf nationale Souverenität?" Die Strafverfolgung von Kriegs- und NS-Verbrechen in der Bundesrepublik, der DDR und Österreich', in Frei, *Transnationale Vergangenheitspolitik,* 37-93, 47.

may conclude that it was not so much a matter of what has (or has not) been done, as the manner in which it was (or was not) put to rest.[6]

Political Justice and Transitional Justice – Outline Definitions

According to the definition proposed by Otto Kirchheimer in the 1960s, *political justice* denotes the use of courts for political purposes in order to extend or consolidate political actions, its function being to control political groups and units by the courts. The purpose of such control is to strengthen one's own position, and weakening that of one's enemy.[7]

Transitional justice is a category introduced much later. It includes processes and activities concerning crimes committed by a previous regime before a political breakthrough, or which took place during a civil war. The concept is based on the political breakthroughs in Central and Eastern Europe in the early 1990s, and the end of apartheid in South Africa several years later. Along with these processes, the opinion took root that there is a need to remember crimes committed, to put them at the centre of the narrative, to bring the perpetrators to justice, and to recompense the victims.[8] Although the discussion centres round 20th-century events, the subject literature referring to the category of *transitional justice* also addresses socio-political processes which took place much earlier. Therefore, one of the propositions attempts to define the historical development of this phenomenon, is calling for *transitional justice* to be divided into three waves. The first would be the Nuremberg Trials of 1945-1949, the second, the political breakthroughs in Southern Europe in the 1970s (Portugal, Spain, Greece), and the third, the fall of military dictatorships in Latin America in the 1980s, the political breakthroughs in the countries of Central and Eastern Europe at the end of the 1980s, and later in Latin America, and finally to the end of apartheid in South Africa in the 1990s.[9] Another mode of division was proposed by Ruti

6 Annette Weinke writes "It is less decided by the question of 'what?' than by 'how' in dealing with crimes committed by the state."

7 See Otto Kirchheimer, *Politische Justiz: Verwendung juristischer Verfahrensmöglichkeiten zu politischen Zwecken* (Frankfurt am Main, 1981), 606.

8 Anne K. Krüger, *Transitional Justice*, Version: 1.0, in: *Docupedia-Zeitgeschichte*, [25 January 2013], URL: http://docupedia.de/zg/Transitional_Justice?oldid=125451. This is an article on the history and development of the notion of *transitional justice*, as well as the field of scientific research into the history and development of *transitional justice*, and research areas devoted to these processes.

9 Carmen González Enríquez, Alexandra Barahona de Brito, and Paloma Aguilar Fernández (eds), *The Politics of Memory: Transitional Justice in Democratizing Societies* (Oxford, 2001). For the newest literature see among others: Nanci Adler (ed),

Teitel, which assumes the development and practical application of international law as its criterion. Here, *transitional justice* also rooted in the immediate post-war period (in '*post-war transitional justice*). This mainly concerns the Nuremberg and Tokyo Tribunals when, for the first time in history, national sovereignty had to give way to punishing crimes against humanity, as reflected in the prosecution of the political elites of the regimes deemed to be criminal. These proceedings set the standards for subsequent years.[10]

A slightly more amenable definition of *transitional justice*, also referred to as *post-conflict justice*, is suggested by Rachel Kerr and Eirin Mobekk when they say: "The terms transitional justice and post-conflict justice are used here interchangeably to denote the range of judicial and non-judicial mechanisms aimed at dealing with a legacy of large-scale abuses of human rights and/or violation of international humanitarian law and they go on to say: Broadly speaking, justice is thought to contribute to the restoration and maintenance of peace in the following ways: by establishing individual accountability, deterring future violations, establishing historical records, promoting reconciliation and healing, giving victims a means of redress, removing perpetrators and supporting capacity-building and the rule of law." In their definition, Kerr and Mobekk take two more dimensions into account. Being important from the perspective of the first stage of the Main Commission's activities, they are presented in more detail below. The first dimension concerns the risks and dangers connected with *transitional justice*. Among them, the authors enumerate the risk of destabilisation, recurring trauma and politicisation. The second dimension is the context in which *transitional justice* is meted out. This consists of cultural standards and values, the nature of the conflict, the scale and type of committed crimes, and the need to differentiate between and recognize the particular needs of victims, survivors,

Understanding the Age of Transitional Justice: Crimes, Courts, Commissions, and Chronicling (New Brunswick-New Jersey, 2018); Cheryl Lawther, Luke Moffett, and Dov Jacobs (eds), *Research Handbook on Transitonal Justice* (Cheltenham, 2017). A reflection on the Polish case is provided by Klaus Bachmann, 'The Polish Paradox: Transition from and to Democracy', in Nico Wouters (ed), *Transitional Justice and Memory in Europe (1945-2013)* (Cambridge, 2014), 327-50.

10 See Ruti Teitel, 'Transitional Justice Genealogy', *Harvard Human Rights Journal,* 16 (2003), 69-94. For the role of the Nuremberg Trials in the context of international law see also Richard Overy, 'The Nuremberg Trials: International Law in the Making', in Philippe Sands (ed), *From Nuremberg to the Hague: The Future of International Criminal Justice* (Cambridge, 2003), 1-29; Enrico Heitzer, Günter Morsch, Robert Traba, and Katarzyna Woniak (eds), *Im Schatten von Nürnberg: Transnationale Ahndung von NS-Verbrechen* (Berlin, 2018).

and perpetrators, further peace agreements, finance and infrastructure, political will, and, finally, weaving them into an international context.[11]

Can the activities of the Main Commission be interpreted within a framework so defined? Looking at the problem in its broader historical context in terms of time and place, should the first stage of the Main Commission's operations be characterized as symptomatic of *political* or *transitional justice*?

Breakthrough and the Practice of Justice: The Beginnings of the Main Commission

First, a short word of explanation might be in order. Preparations for punishing World War II crimes, both on the Polish side and internationally, were already in progress before the end of the war.[12] In the international context, a key step was the Moscow Declarations of 30 October 1943, also known as the Declaration of the Four Nations.[13] This laid the groundwork for the United Nations Organisation *per se*, and its subsidiary branches, to deal with German war crimes on which authority the International Military Tribunal at Nuremberg was founded. In Poland, a key document for retributive justice was the "Sierpniówka": "the Decree of the Polish Committee of National Liberation of 31 August 1944 on punishment for fascist-Nazi criminals responsible for killing and abusing civilians and POWs and for the traitors of the Polish Nation (further referred to as the *August Decree*).[14]

From an institutional perspective, the prosecution of Nazi war crimes was written into the process of Poland's liberation from German occupation. The first formalized initiative in this respect was the Polish-Soviet Extraordinary Commission for Investigation of Crimes in the Area of the Concentration

11 Rachel Kerr and Eirin Mobekk, *Peace and Justice: Seeking Accountability after War* (Cambridge, 2007), 3-4, 8-14.

12 It was done both by the London government, e.g. the London Declaration on the Prosecution of War Crimes (1942), the Decree on Legal Prosecution of War Crimes of March 30, 1943, and the PKWN. A War Crimes Office operated in London as from autumn 1943.

13 Original: United Nations Documents 1941-1946, *Oxford University Press for the Royal Institute Of International Affairs (1946).* The Polish version of the Moscow Declaration is already included, *inter alia* in the collection of legal acts of the Main Commission concerning war crimes. See IPN GK 184/1.

14 A key document on World War II retributions, but which also legalizes civil war waged against political opponents of the new regime. Broader references to the following document by Andrzej Paczkowski and Joanna Lubecka in this volume. Literature: Piotr Kładoczny, *Prawo jako narzędzie represji w Polsce Ludowej (1944-1956): Prawna analiza kategorii przestępstw przeciwko państwu* (Warsaw, 2004), 176-86; Adam Lityński, *O prawie i sądach początków Polski Ludowej* (Białystok, 1999), 63-72.

Camp at Majdanek, which operated in the camp's area, albeit only for a week, from 18 to 25 August 1944. The commission officially completed its mission in October 1944.[15] It laid the groundwork for the first judicial proceedings in this new field of criminology in Poland – the trial of the Majdanek staff before the Special Criminal Court in Lublin. This took place between 27 November and 2 December 1944, half a year before the war ended.

The Commission for Investigation of German Crimes in Warsaw was set up in October 1944 after Polish and Soviet troops seized Warsaw's east bank district of Praga, which was separated from the main part of the city, still occupied by the Germans, by the river Vistula. The immediate situation was not without effect on this Commission's operations over this period. The primary goal of the Warsaw Commission was to collect evidence and testimonies on German crimes committed against the population of Praga. This was done under the gunfire of ongoing military operations. The organizational meeting of the Commission took place on 12 December with the next one envisaged for 18 January, which did not take place due to the recapture of west bank Warsaw from the Germans. The work of the Commission was influenced at that time by the prevailing conditions: the lack of funds, communication impediments, mines which had been laid throughout the city, chaos connected with the unstoppable influx of people, and looting. In addition, a monumental challenge, after all of Warsaw had been liberated, was the burial of thousands of corpses in order to avoid an epidemic.[16]

On 29 March 1945 the Commission for the Investigation of German Crimes in Oświęcim (i.e. Auschwitz) was set up under the chairmanship of the then Minister of Justice Edmund Zalewski (further referred to as the Auschwitz Commission). Its task, besides examining crimes committed at Auschwitz itself, was also to organize the Main Commission for Investigation of German Crimes in Poland. The structure, composition, and work mechanisms of the Main Commission were actually adumbrated by the methodologies developed by the Auschwitz Commission.[17] The legal framework for the activities of the Main Commission was installed more than half

15 Contemporaneous publications on this subject: Borys Gorbatow, *Obóz w Majdanku* (Moskwa, 1944); *Majdanek: rozprawa przed Specjalnym Sądem Karnym w Lublinie* (Kraków, 1945); Konstanty Simonow, *Obóz zagłady* (Moscow, 1944).

16 Details on the Warsaw Commission: *Sprawozdanie z działalności Komisji dla zbadania Zbrodni Niemieckich w Warszawie* (Motas, 1945); *Główna Komisja*, vol. 29, doc. 29, 117-121, 30; *Sprawozdanie z działalności Oddziału Warszawa-Miasto Głównej Komisji Badania Zbrodni Niemieckich w Polsce za czas od dnia 1 sierpnia do 15 grudnia 1945 r.,* (1945), doc. 30, 121-5.

17 A document on the first session of the Auschwitz Committee: 'Komunikat o posiedzeniu Komisji do zbadania hitlerowskich zbrodni w Oświęcimiu w dniu 29. Marca 1945 r.', (Kraków, 1945), in Motas, *Główna Komisja,* doc. 2, 12-13.

a year later, on the strength of the Decree of the Krajowa Rada Narodowa (State National Council) of 10 November 1945 (Journal of Laws No. 51. Item 293). The Establishment of the Main Commission and the Decree regulating its operations are usually listed back-to-back in the subject literature, despite the fact that these few months meant operating in changeable, chaotic, hazily defined and transitory conditions, and, at least initially, in the context of a nation at war. This period is illustrated briefly in the several paragraphs that follow immediately below.[18] The Main Commission was established at the very centre of what we might call the government-in-formation, i. e. at the Presidium of the National Council of State. In July 1945, it was subordinated to the Ministry of Justice, with the Minister assuming the role of chairman. The Report concerning the operations of the Main Commission for 1945-53 states: "The Main Commission was initially conceived as an organisation of a social nature. Its task was to collect materials concerning the criminal activities of the Nazi regime in Poland for historical research and propaganda purposes. It soon transpired that investigative activities were beyond the capabilities of a social organisation (such as this) and required the introduction of a professional factor, i. e. jurists familiar with investigative methods."[19] This retrospective reflection, however, did not address the nuances involved in their entirety. The need for a Main Commission legitimized by a legislative foundation was signalized from the very moment of its conception.

The regulations of the Commission, adopted at its founding meeting of 17 May 1945, defined its tasks as follows: the collection of materials and research into the criminal activities of the German State Authorities, the NSDAP authorities, as well as any and all other German institutions and representatives of the German population, pertaining to Polish citizens residing both within and outside of Poland, and to any other nationalities who, during this period, were permanent residents or temporary visitors in Polish territories.[20] From the very beginning, this defined the Main Commission's scope of activities as an institution whose mission was to transcend Polish borders. That was reiterated in item C paragraph 1 of its statute, in which emphasis was put on making available publications on the activities of the Main Commission to the broadest possible audience in Poland, and to foreign institutions of a similar nature.[21]

18 See Izabela Borowicz and Maria Pilarska (eds), *Główna Komisja Badania Zbrodni przeciwko Narodowi Polskiemu: Informator* (Warsaw, 1997), 6; Motas, *Główna Komisja*, doc. 7. This brief trend also relates to newer analyses.

19 *Tezy do sprawozdania z działalności GKBZHwP w latach 1945-1953,* IPN GK 162/138, 2.

20 'Regulamin Głównej Komisji Badania Zbrodni Niemieckich w Polsce przy Prezydium Rady Narodowej, 17. 5. 1945', in Motas, *Główna Komisja,* doc. 8, 26-7.

21 Motas, *Główna Komisja* subitem c, item 1, 26.

However, compliance with the law and the inclusion of jurists in its works was to fit into an ideological framework from the very beginning. The Regulations said: "Any and all works connected with research into German crimes in Poland should be conducted with the utmost precision and objectivity, in order to accurately represent the reality. The collection, securing, and processing of evidence shall be subject to the relevant regulations of the Polish Criminal Procedural Law."[22]

It is no secret that there was a yawning gap between declarations of compliance with the law in post-war Poland, as expressed in official documents, and the reality, where those declarations were constantly being disregarded.[23] Bearing this in mind, it is still difficult to regard the law as being opportunistically exploited for the attainment of political goals, at least in the context of the Commission's initial activities. Why? Firstly, it was a period of pure transition in which nothing was concisely defined. The new, Communist, government was still preoccupied with its own legitimization, and the task of focusing its ideology was only to be taken up several years later. The basic task of the Main Commission and its field branches (conceived prior to the November Decree) were at that point activities mainly connected with the collection of documents, i. e. searching out, securing, and processing documents and material evidence to prove the countless crimes committed in Poland during the war. Secondly, which was also typical of the immediate post-war months and years, at this stage, the justice system was not yet fully appropriated by the incoming dictatorship as a political tool, as compared to the situation in subsequent years. Granted, this process had already begun on a number of fronts, including in the legislative realm; however, it had not achieved the momentum observed in the late 1940s. A substantial number of jurists were of the pre-war old school, educated and used to an altogether different political environment, and, therefore, less susceptible to political indoctrination than the up-and-coming subsequent generations.[24]

An example of consciousness in interpreting the law is offered by the first hearings of former prisoners of the Auschwitz camp, which were conducted after the initial visit to the camp by the Auschwitz Commission on 5 April 1945. The report for the Commission's chairman Edmund Zalewski, the Minister of Justice, in the paragraph concerning witness interviews in the Court of Appeal in Kraków (between 6 and 19 April 1945), which were open to the public and the press, underlines the weight of importance and

22 Motas, *Główna Komisja* item 8 of the Regulations, 27.

23 See fn. 14.

24 For reforms in the field of legislation, with particular focus on the justice system, see Andrzej Rzepliński, *Die Justiz in der Volksrepublik Polen* (Frankfurt am Main, 1996), chapter: *'Die Einführung des neuen Justiztypus 1944-1954'*, 30-62.

key role in examining the crimes committed.[25] However, a subsequent report concerning the same interviews (included in the Auschwitz Commission's annual activity report), signed by the prosecutor, Edward Pęchalski, and the so-called "district judge investigating officer", Jan Sehn, (both members of the Commission), is quite different.[26] The section concerning the interviews that had been conducted was found to contain numerous problems. These included, firstly, the lack of a uniform plan regarding questioning witnesses for both defence and prosecution, or giving any coherent direction to the contingent research, which translated into a lack of material clarity and chronological consistency in the protocols. Secondly, witness interviews were conducted in foreign languages with the assistance of interpreters, but the protocols themselves were never signed off by the witnesses. Prosecutor Pęchalski's and Judge Sehn's application to have the parties interviewed by a legal subcommittee was rejected, and the hearings were continued by the Main Commission. Only later were the materials collected by the Auschwitz Commission and processed by the legal subcommittee in accordance with the procedures envisaged by the Polish Code of Criminal Procedure.

Attention to detail and the probity of the work carried out were also part of the Main Commission's mission. During the meeting of 25 July 1945, the then Minister of Justice, Henryk Świątkowski, described its goals as follows: "German crimes are to be perpetuated in the popular memory so that future generations have access to authentic sources, because we have to remember that the Germans, who even now are trying to erase all vestiges of their criminal activities, will in the future attempt to undermine evidence gathered by the Commission. Therefore, any and all of the Commission's activities should be conducted in accordance with the Criminal Procedure Code, and documents, e.g. research protocols, should be drawn up and signed by the examining judges and prosecutors. Participation of the judiciary as a factor in the Commission's activities is paramount. It is vital that the magnitude of German crimes be known to nations who themselves have not suffered German occupation. Therefore, translations of the publication should be produced as soon as possible, beginning with translations into English and French."[27]

25 'Sprawozdanie przewodniczącego Komisji dla Badania Zbrodni Niemiecko-Hitlerowskich w Oświęcimiu – ministra sprawiedliwości, Edmunda Zalewskiego', in Motas, *Główna Komisja,* doc. 3, 14-20, esp. 16.

26 'Sprawozdanie z działalności Oddziału Krakowskiego Głównej Komisji Badania Zbrodni Niemieckich w Polsce od początku jej istnienia aż po dzień dzisiejszy', (1945), in Motas, *Główna Komisja*, doc. 23, 83-4.

27 'Protokół posiedzenia Głównej Komisji Badania Zbrodni Niemieckich w Polsce', (1945), in Motas, *Główna Komisja*, doc. 13, 37.

The theme of law understood as a basis for the activities of the Main Commission flits through numerous protocols drawn up in the spring and summer of 1945. The repeated calls to establish a legal basis for the operations of the Main Commission, and thus regulate its activities, are particularly conspicuous. The first monthly report to The Presidium of the State National Council of the Main Commission of 6 June 1945 even in item 2 states: "The Presidium of the Main Commission hereby applies to the Presidium of the State National Council to issue in a timely manner an official statement, which would declare that, on the territory of Poland, the Main Commission constitutes a body prevailing over any and all commissions, committees, and other similar local institutions, established beforehand or alongside it, for the purpose of investigating German crimes in Poland."[28] The stated reasons are the numerous similar institutions at all local government levels, from the municipal to the provincial, and the accompanying threat of chaos and impossibility of drawing up a hierarchical operating scheme based on general principles deduced from practice as it unfolded. In a marginal note, Mieczysław Motas remarked that in the original document, the State National Council (KRN) took note of the need to "Compose a draft statement", and the KRN archives also contain a press statement.[29] However, no decree was released at that time. Alfred Fiderkiewicz, the first director of the Main Commission, during an organisational conference at the beginning of July 1945, stated that by that point, "… no decree has been released on the creation of the Main Commission for Investigation of German Crimes in Poland, which consequently, from a legal-formal standpoint, does not exist."[30] One day later, during a meeting of the Presidium of the Main Commission, Alfred Fiderkiewicz, commenting on the relative lack of activities of the Main Commission, justified this by claiming it was due to a lack of the necessary funds and executive apparatus. The lack of financial resources, its sense of temporariness, the uncertainty in its terms of reference, were characteristic of not just the Main Commission, but also of its field branches.[31] Fiderkiewicz postulated the need for the prompt development of a legal basis regulating the Commission's activities, and for that purpose he

28 See item 'Do Prezydium Krajowej Rady Narodowej: Pierwsze sprawozdanie miesięczne Głównej Komisji Badania Zbrodni Niemieckich w Polsce.', (1946), in Motas, *Główna Komisja*, doc. 9, 28.

29 See Motas, Główna Komisja, doc. 30, fn. 3.

30 'Protokół konferencji organizacyjnej Głównej Komisji Badania Zbrodni Niemieckich w Polsce, odbytej w lokalu prezydium KRN', (1945), in Motas, *Główna Komisja*, doc. 11, 33-6.

31 See e.g. Łukasz Jasiński, 'Okręgowa Komisja Badania zbrodni hitlerowskich w Gdańsku w latach 1965-1989', *Pamięć i Sprawiedliwość*, 1/21 (2013), 247-248.

prepared a draft decree, with its detailed version prepared by Prosecutor Stefan Zygmunt Kurowski in consultation with the KRN Legal Affairs Office.[32]

The documents cited above reinforced the understanding of the law as a standard, the meeting of which had an existential dimension for the Main Commission and its activities. Certainly, it was a means for legitimizing its own actions, but not necessarily a political instrument in the sense of being a weapon in the ideological arsenal of the new administration.[33] Was it only a matter of hypothetical fears, or did the lack of a legal basis necessary for the functioning of the Commission translate into some form of imperfect practice? The activities of the Auschwitz Commission (and later the Kraków field branch of the Main Commission), and its first visit to Auschwitz, may serve as an analytical example.[34] The legal sub-commission only arrived in Auschwitz on 7 May 1945. The first challenge was the actual inspection of the premises. At the time, the main Auschwitz camp was being used as a Soviet military hospital and a staging post for the Soviet military authorities. For the protection of the camp, as well as the one in Brzezinka (which was part of the complex of concentration camps in the Auschwitz area), the 'security of the Auschwitz camp' was envisaged. However, it was too understaffed to control forty square kilometres. As a result, there were numerous thefts of objects of crucial documentary importance. The search for documents within the camp, carried out by members of the Commission, literally led them through basements, latrines and sewers; only after their thorough cleaning, did the findings prove useful in reconstructing the history and operations of the camp. These included plans, lists of prisoners, lists of the prison authorities, and correspondence with the headquarters in Berlin. The volume of materials collected in the course of this work, theoretically, could have been expanded, but this proved impossible in practice. The underlying causes may have been trivial; however, they were symptomatic of the post-war reality characterized by general deficit in every imaginable essential resource, chaos and overlapping competencies: the Commission did not have a vehicle at its disposal to travel about the sprawling camp site. The shipment of documents out of the camp also posed an insuperable problem. Documents packaged for transport were collected by representatives of the Red Army, and objects of evidential-documentary value, e. g. the gallows from the 'Death Block', were not cleared for removal for safekeeping.

32 'Protokół posiedzenia Prezydium Głównej Komisji Badania Zbrodni Niemieckich w Polsce', (1945), in Motas, *Główna Komisja*, doc. 12, 36-7.

33 This changed in subsequent years; see *Tezy do sprawozdania z działalności GKBZHwP*, 7-8.

34 *Sprawozdanie z działalności Oddziału Krakowskiego*, 81-93.

Members of the Commission were also considerably hampered by a permanent lack of freedom of movement within the camp, and a prohibition on taking photographs. When a photographer interrogated by the Soviet military authorities informed them that he worked for the Main Commission for Investigation of German Crimes in Poland, his Soviet interrogators stated that they were not aware of the existence of such a Commission (though at that point the Commission had already been making investigations at the camp for three weeks). Impediments arose virtually from day to day: the camp was becoming derelict, the gallows had been hacked down, the roof of the crematorium was converted into a dance floor, not to mention that the entire area of the camp was subject to sporadic outbreaks of fire and wonton destruction. The Auschwitz Commission was renamed the Kraków field branch of the Main Commission; however, that did not solve any problems. At that time, Auschwitz-Birkenau was being used to house German POWs, which resulted in a total entry ban. In view of this, the Commission attempted to investigate other camps in the region, but the situation there turned out to be only slightly better. The situation in places still under Soviet military control was very similar to that which obtained in Auschwitz. To work in places under the jurisdiction of the Polish authorities required permits issued by the Department of Prisons and Camps, which the Commission neither had, nor could it produce any sort of documentary evidence confirming the importance of its activities.[35]

Another factor in the Kraków Commission's activities was its foresight of the need to gather documents, albeit based on a measure of randomness and luck. The staff of the Kraków branch travelled throughout the region, carried out targeted searches, at times saving important General Government documents from destruction, sometimes literally at the last possible moment. Such was the case with a trading company in Kraków, right before a consignment of documents was to be taken for recycling.[36] But the Commission's staff rose to the occasion ceaselessly lobbying all powers that be, to gather and archive all documentation left by the Germans. These efforts quickly bore fruit: the Kraków Commission was able to almost instantly deliver documentation to the Ministry of Justice, which was used in preparing for the Nuremberg Trials.

Participation in the imposition of the peace settlement process on an international scale in the immediate post-war period is, in fact, one of the more

35 On the post-war history of the Auschwitz camp see Imke Hansen, "*Nie wieder Auchwitz!" Die Entstehung eines Symbols und der Alltag einer Gedenkstätte, 1945-1955* (Göttingen, 2015); Zofia Wóycicka, *Przerwana żałoba: Polskie spory wokół pamięci nazistowskich obozów koncentracyjnych i zagłady 1944*-1950 (Warsaw, 2009).

36 *Sprawozdanie z działalności Oddziału Krakowskiego Głównej Komisji*, 87.

significant aspects of the Main Commission's operations. In August 1945, the Main Commission became a part of the United Nations War Crimes Commission, collecting documentation concerning war crimes presented by individual governments. The Polish delegates from the Main Commission were Mieczysław Szerer and Tadeusz Cyprian.[37]

Summary

How can the abovementioned activities of the Main Commission in 1945 be classified by reference to the categories of *transitional justice* or *political justice*? The latter, in the interpretation proposed by Otto Kirchheimer, seemed hardly to correspond to the aims and *modus operandi* of the Main Commission. By way of exception, it may be viewed in terms of the system's legitimization on an international scale: the activities of the justice system of the new government were recognized by other states, which ultimately strengthened its international legitimization.

The category of *transitional justice* seems far more fitting for determining the operations of the Main Commission. The main idea behind the works of the Commission (see the definition at the beginning) was the opinion that the crimes that had been committed should be remembered. This translated into documenting both its principal activities and its contingent research work. Both were intimately linked with its determination and its practical contribution to bringing perpetrators to justice, and hence at least symbolically to recompense their victims (most of whom died during the war). Of course these activities were somewhat lopsided in that they did not apply to all crimes committed in the course of the Second World War. The Commission only investigated the Nazi sphere of criminal operations. Obviously a blind eye had to be turned to Soviet crimes due to the political system forcibly imposed on Poland by the post-war settlement, and the ever-vigilant forces of censorship that held sway in deference to that settlement until 1989.

The definition of *transitional justice* proposed by Rachel Kerr and Eirin Mobekk offers some measure of specific interpretational potential. It dovetails with much of what the Main Commission sought to achieve in the practical aspects of its operations, though several clearly visible restrictions were in attendance. Without a doubt we can discuss legal and extra-legal activities aimed at preventing future violence, preserving historical documentation, affirming the determination to punish criminals and recompensing victims,

37 See Jasiński, 'Okręgowa Komisja Badania zbrodni hitlerowskich w Gdańsku w latach 1965-1989', 246.

etc. It is difficult, however, to find anything like appeals for peace in the initial documents of the Main Commission. The same applies to the need for conciliation – there is simply no reflection of this need in the documents. Considering the scale of the committed crimes, it was for both its victims and perpetrators – that is the direct witnesses to the events – clearly impossible to think in terms of notions like peace and conciliation immediately after the war.

The risks in the *transitional justice* process, as enumerated by Kerr and Mobekk, were related to the Main Commission only on a small scale, or were so evident for the historical moment, that it is difficult to treat them as posing specific hazards. The political situation in Poland in 1945 was, in and of itself, unstable. This was the backdrop to the Commission's activities which essentially related to clearly defined perpetrators and the will to bring them to justice – a desire universally shared in society as such, regardless of individual political persuasion.[38] On the other hand, the Commission, because of its designated role and position in the power structure of the new regime, was unavoidably politicised. In the final analysis, it must be remembered that all of this was happening in the context of a profoundly traumatized society that needed decades to recover, assuming it ever could fully recover from the experience.[39] Victims of the war, former camp prisoners, were constantly confronted with their past.[40] The first director of the Commission, Alfred Fiderkiewicz, had been a prisoner in Auschwitz. During interviews conducted by Prosecutor Sehn, Fiderkiewicz mentioned how, still in his camp uniform, he assumed his duties as the mayor of Kraków immediately after the war.[41]

The examples analysed above prove beyond a shadow of a doubt the key role played by the context in which the process of Polish *transitional justice* unfolded after 1945. The nature and type of the crimes committed, as well as their scale, clearly marked out the path the Main Commission was to follow from the start. The sheer enormity of this sinister legacy translated into its arduous documentary-research activities. The source of its conception was political will. The achievement of its defined goals was obstructed – at least at the beginning – by disruption and disorder in infrastructure and finances,

38 The reckoning with the political opponents of the new regime was a completely different kettle of fish.

39 Deliberations on post-war trauma, see Zaremba, *Wielka Trwoga*, 87-137.

40 E. g. female prisoners of the Auschwitz camp starring in the film by Wanda Jakubowska *Ostatni etap*, see Monika Talarczyk-Gubała, *Wanda Jakubowska: Od nowa* (Warsaw, 2015).

41 *Protokół przesłuchania A. Fiderkiewicza z 31. 7. 1945 przez śledczego Jana Sehna,* 1-46, AAN 472/II-1, 43-4.

the symptomatic problems of the time. The scale, nature and motivation behind the operations of the Main Commission was also significantly influenced by the international context in which it operated in – primarily, its task to produce documentary evidence for the Nuremberg Trials, and to support the work of the Polish delegate to the United Nations War Crimes Commission.[42]

The international context, along with the escalating hostility between the Soviet and western power blocs, also dominated the work of the Commission as from the late 1940s. While dealing with the Second World War crimes issue, it smoothly transitioned into the Cold War era which imposed readjusted priorities. On a national scale, at the end of the 1940s, it was subjected to intensifying Stalinization, and for a time its operations were practically suspended. The Main Commission, renamed the Commission for the Prosecution of Crimes against the Polish Nation, still exists. Since the creation of the Institute of National Remembrance, it has constituted one of its departments, and enjoys the status of being the oldest existing institution of its kind in Poland.

So far, its story is still dominated by more or less jubilant narrations and characteristics of a strong informational nature – with a barrage of dates and numbers, which, while proving the incredible efficiency of the Commission over the decades, are still very much overwhelming for the reader.[43] Simply referencing the numbers, dates and statistics may paradoxically be a significant impediment in the analysis the of history of the Commission. In the context of its story and, by extension, stories about Polish reckonings with war crimes, it is worth transcending the purely statistical narrative to attempt its deconstruction. It is to view the Commission's history as full of twists and turns rather than a linear narration based only on names, publications, quantities of collected documents, and initiated or conducted proceedings. Without questioning the weight of individual chapters, but, instead, by analysing them in parallel, a more diverse story may emerge. The task of looking

42 The international context was to affect the activities of the Main Commission continuously, and from the 1960s it was to be intertwined with the activities of the Zentrale Stelle in Ludwigsburg. In the late 1960s, the Committee also actively supported initiatives for no statutes of limitation for genocide and crime s committed by the National Socialist regime in Poland between 1939 and 1945.

43 There are rarely new publications on the topic. A recently published short overview is available in Łukasz Jasiński's, 'Główna Komisja Badania Zbrodni Niemieckich/Hitlerowskich w Polsce: narzędzie rozliczeń i propagandy', in Andrzej Paczkowski (ed), *Rozliczanie totalitarnej przeszłości: instytucje i ulice* (Warszawa, 2017), 49-70. Erst vor kurzem erschien eine umfangreiche Studie von demselben Autor: Jasiński, Łukasz, *Sprawiedliwość i polityka: Działalność Głównej Komisji Badania Zbrodni Niemieckich/Hitlerowskich w Polsce 1945-1989* (Gdańsk/Warszawa, 2018).

through the piles of documents, focusing on efforts to collect them, and identifying the faces, and the individual stories behind them, still stands before us. Transitioning from the focus on the question of "what?" – which, in the case of the Main Commission, seems to be very well researched – to the question of "how?" – i. e. examining the challenges specific for the time and place, and hence narrating a chapter, but not necessarily an entire story. The fascinating post-war period of the Main Commission may become a new beginning for such an attempt.

Joanna Lubecka

German Crimes Tried in Poland: A Political and Legal Analysis on the Example of Supreme National Tribunal Trials in Southern Poland

Introduction

The cross-over from war to peace in 1944-45 was an exceptionally difficult time for Poland. The country's inhabitants were exhausted and pauperized by two occupations, and the front lines that passed to and fro over her territories brought her neither real liberation nor reconstruction as a sovereign state. With hindsight we can see that the fate of Poland in 1945 was sealed some time before. However, the communist authorities assuming power in Poland found themselves inordinately obstructed in their design by the very strong groundswell of anti-communist sentiment which manifested itself through passive and active resistance. In response, communist propaganda seized on any and all arguments to legitimise the new authorities. A reckoning with German war crimes appeared to be an ideal stratagem for uniting the nation in its quest for justice behind the new government and, thereby, give it a credible measure of legitimacy. The popular cry for an implacable reckoning with the German invader, and punishing him for the crimes perpetrated in Poland, was not subject to discussion. All that was needed, from the new regime's point of view, were laws and a judicial system that both responded to public expectations in regard of German war crimes, and served the needs of the communist authorities in consolidating their grip on power. The point was to emphasise the merits of the new authorities in prosecuting German criminals without touching upon the crimes of the second invader, the Soviet Union.

Although the purpose of the communist authorities, which sat in judgment over war criminals and punished them, was convergent with social expectations, the organizational aspects of this process were far from easy,

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since both occupations, German and Soviet, took a tremendous toll on the Polish legal profession, and the education of new cadres at such short notice was impossible.[1] This quantitative depletion was caused by numerous deaths, deportations to the USSR, emigration, as well as commitment to the anti-communist movement which automatically disqualified one from working for "People's Poland". At the same time, in the years of occupation, for objective reasons, no new legal experts were educated that could supplement the shortages. Thus, the communist authorities were, in a sense, doomed to make use of pre-war legal experts who, in their majority, were not as ready to serve the new regime as might have been hoped for. From an objective point of view, this fact also had a positive aspect – the most important being, that the biggest trials of German criminals, mainly before the Supreme National Tribunal, were ushered through carefully, without violations of rights and procedures, and without strident propaganda broadcasts on the part of the participating lawyers. The political objectives of the new authorities were completed naturally – the authorities added to their list of successes the efficient delivery of sentences regarding the greatest war criminals, as was expected by Polish society. The communist-controlled media, on the other hand, sought to provide the desired propaganda effects.

Two interesting aspects, less frequently raised in Polish literature, may also be worth noting. They concern the dispensation of justice which took place after analysing and comparing Polish trials with the Anglo-American approach, and the Nuremberg Trials themselves. Firstly, in Poland there was basically no broader discussion among jurists on the legislative solutions available. This contrasted with the turbulent debates among not only Anglo-American jurists themselves, but also between representatives of the common law and Roman law systems. This situation was quite exceptional though, in a sense, understandable.[2]

The second interesting issue that remains is that of the treatment of German criminals in Polish prisons, which is discussed below mainly on the example of the Krakow Montelupich Street prison (further referred to as Montelupich), where the most important war criminals who were tried in Poland were kept in custody.[3]

The most important legal dilemmas accompanying the trials and how they were perceived in Poland, are presented below.

1 Of the 3500 pre-war judges and prosecutors, only 1300 were available for service after the war; for more details, see: Piotr Kładoczny, 'Kształcenie prawników w Polsce w latach 1944-1989', in *Studia Iuridica*, 35 (1998), 89-114, 89.

2 Susanne Jung, *Die Rechtsprobleme der Nürnberger Prozesse: Dargestellt am Verfahren gegen Friedrich Flick* (Tübingen, 1992), 144.

3 Forty KL Auschwitz staff members, Rudolf Höss, Amon Göth, Josef Bühler.

Legal Dilemmas in Punishing German Criminals

In terms of quantity and quality, World War II crimes were organized on an unprecedented, one might say industrial, scale in terms of output and work organisation. As a result, the Allies faced serious legal dilemmas. The German Reich's legal system completely ignored and breached the elementary moral principles informing natural law; on the other hand, it was consistent with the criteria of legality from the positivist perspective. Put simply, German lawyers, standing on the ground of "pure" law, were unable to defend themselves against violating the spirit of the law. This was unquestionably due to the dominant effect of the early 20th century and inter-war positivist school on German law and the tradition of German legal thinking.[4]

Once the war was over, the international community faced several legal dilemmas in its urge to punish German crimes. Firstly, delivering judgments against criminals who acted in accordance with the law of their own state (the German Reich) was problematic. Secondly, the issue of passing judgment on persons who did not commit crimes directly – leaders of the German Reich, concentration camp governors etc. – remained unresolved. Thirdly, and finally, the problem of the legal structures, which were created to judge criminals in violation of the time-honoured legal principles of *lex retro non agit* and *nulla poena sine lege.* All persons examining the Nuremberg laws and the trials of those accused of crimes agree on their critical importance, though at that time there were plenty of lawyers who subscribed to the opinion that "Nuremberg is a return to barbarity".[5]

In addition to many lawyers, representatives of legal institutions of the victorious powers also sought to dissociate themselves from the Nuremberg Trials. The clearest example of this may be seen in a comment made by the Chief Justice of the American Supreme Court, Harlan Fiske Stone: "Jackson [Chief US prosecutor – JL] is away conducting his high-grade lynching party in Nuremberg. I don't mind what he does to the Nazis, but I hate to see the pretence that he is running a court and proceeding according to common law. This is a little too sanctimonious a fraud to meet my old-fashioned

4 German legal positivism was the brainchild, among others, of Rudolf von Jhering, Georg Jellinek, Hans Kelsen (Austrian), Bernhard Windscheid and Gustav Radbruch.

5 These words were uttered by the German lawyer Robert Servatius. At Nuremberg, he was the defence counsel of Fritz Sauckel (who dealt with the exploitation of forced labour). Later, Servatius was the main defence counsel of Adolf Eichmann at his trial in Jerusalem. Initially, British and American lawyers had doubts; for obvious reasons the opinions of German lawyers were taken into consideration to a much lesser degree. Quot. after: Norbert Frei, *Vergangenheitspolitik: Die Anfänge der Bundesrepublik und die NS-Vergangenheit* (München, 1996), 163.

ideas."[6] In a private letter, he wrote: "I wonder how some of those who preside at the trials would justify some of the acts of their own governments if they were placed in the status of the accused."[7] The above quote encapsulates in one statement all the charges against the Nuremberg and other criminal trials: "the court of the victorious over the vanquished". It applied not only to legal doubts, but also to the principle itself, that the victorious powers, in breach of international law, imposed methods of proceedings by diktat, and the judges in all of the trials represented only the victorious powers.

The Nuremberg Trials, as described by Franciszek Ryszka, were "unique and one-off" for both their proponents and their critics. The International Military Tribunal (IMT) conducted proceedings from 20 November 1945 until the pronouncement of the sentences on 1 October 1946. The trials concerned twenty-four leaders of the Third Reich, half of whom were sentenced to death. In terms of passing judgments on war criminals, the most important seem to have been the so-called Nuremberg principles which aroused the greatest controversies and which were an integral part of the International Military Tribunal Statute.[8]

Without engrossing ourselves in the course of the trial before the IMT itself, it is worth taking a closer look at the main legal doubts which accompanied the establishment of the Nuremberg principles and the rare comments of Polish lawyers on their subject. It is worth emphasizing that discussions among lawyers, even before the Nuremberg Tribunal was decided upon, were apt to end in deadlock. The international judiciary was ready to pass judgment only on crimes directly attributable to their physical perpetrators, not on behind-the-scenes decision-makers issuing orders, which resulted in genocide. The very fact of the IMT being established ended speculation in this aspect, and although doubts and controversies rumbled on concurrently, the decision itself concerning the establishment of the IMT remained beyond dispute.

The first of these legal dilemmas concerned the issue of operating in line with the law that was valid in Germany (which for soldiers also included having to obey orders). The legal principle of an Act of State, as firmly rooted in Anglo-American law (particularly upheld in American case law), is derived directly from the notion of the sovereignty of a state.[9] This principle re-

6 Thomas Mason Alpheus and Harlan Fiske Stone, *Pillar of the Law* (New York, 1956), 716.

7 Ibid., 716.

8 Tadeusz Cyprian and Jerzy Sawicki, *Walka o zasady norymberskie, 1945-1955* (Warszawa, 1956), 77-9.

9 John Murray, *Natural Law and Legal Positivism in the Nuremberg Trials*, Senior Honors Thesis, Paper 428; See Christine G. Cooper, 'Act of State and Sovereign Immu-

sults in the fact that, in an 'anarchistic' international system, the authorities of one state are not authorized to judge the authorities of another state, since the legal principles determined by a sovereign state constitute the law binding on its territory.[10] According to these assumptions, a person, acting under orders or in line with his state's interests, cannot bear personal responsibility for his state's behaviour. Thus, in a way, that person has immunity because his actions are legal if in line with the law determined by the sovereign authority. Both European and American jurists, even those recognizing the legal positivist approach in a moderate manner, were aware that a complete deviation from the Act of State principle may set a dangerous precedent and may also give a legal basis in future for one state to interfere in the internal legal system of another sovereign state. The idea of deviation from the principle of unconditional sovereignty of law was criticized most vehemently by dyed-in-the-wool legal positivists. Under no circumstances may they be automatically considered as being opposed to the punishment of German crimes. To put it more bluntly, they were unshakably attached to legal formalism, to compliance with the law whatever it may be. This blinkered their ability to find a way of judging criminals; they could not bring themselves to breaking the principles they regarded as sacrosanct, believing that the legal and political order rested on principles which, if undermined, would be the prelude to the destruction of law as we know it. For many positivists, the Nazi period became an argument for deviating from the excessively principled dominance of formalism over axiology and the excessively radical separation of law from morality.[11]

Finally, the dilemma of "operating in accordance with the law" was resolved as a result of the so-called Radbruch Formula. Gustav Radbruch, a pre-war German positivist, in his analysis, came to the conclusion that the positivist model of education of German jurists made them unable to resist the Acts passed by the Nazi system: "Positivism with its belief that 'an Act is an Act' disarmed German lawyers and made them defenceless against acts with lawless and criminal contents."[12] Radbruch started with the assumption

nity: A Further Inquiry', *Loyola University Chicago Law Journal*, 11/2 (Winter 1980), 193-236.

10 When writing about an anarchistic international system I have in mind Hobbes's view of the international system as the world "without the Leviathan", therefore without the superior power over sovereign national states.

11 Herbert Hart (1907-1992), was one of the first positivists who concluded that, in spite of the fact that law does not have to necessarily refer to standards of morality or justice, it does, nonetheless, need to contain some basic principles resulting from moral standards ("a minimum of nature law"), in more detail. See: Herbert Hart, *The Concept of Law* (Oxford, 1961).

12 Gustav Radbruch, 'Gesetzliches Unrecht und übergesetzliches Recht', *Süddeutsche Juristen-Zeitung*, 5 (1946), 105-8, 105.

that if the international community wanted to penalise the German crimes that were not in breach of German law though in complete negation of the elementary principles of morality, it could not do so under the written law, since no such crimes were envisaged under that law. Radbruch took a Roman legal maxim as the basis for what has been referred to as the Radbruch Formula: *lex iniustissima non est lex,* which can be translated as: *an unjust law is no law at all.* Finally, it was accepted that a natural sense of justice was more important than some dogmatic adherence to inoperative principles. It should be emphasized that such an approach was also fostered by European public opinion, outraged as it was with each successively revealed war crime.

For jurists specialising in international law, this was one of the biggest dilemmas in history. It concerned not only the use of principles but, above all, the place of morality and established values in international law.[13] The legal interpretation which had ultimately prevailed in Nuremberg also makes it possible to try war criminals today, such as those from what used to be Yugoslavia or Ruanda.[14] The Radbruch Formula made it possible to overcome the dichotomy engendered by the positivist approach to law, namely: justice of the victors versus the impunity of the criminals. Article 8 of the IMT Statute ultimately recognized that operating under the command of one's government or superior does not release the executioner of an order from penal liability for its effects, though it may prompt greater leniency in approach.[15] It has also been underlined that if there is a clash between domestic and international law, the latter takes precedence since in this situation national law is not binding on the citizen.[16]

Another serious dilemma faced by jurists was the need to pass judgment on the leaders of the Third Reich who did not commit any crimes directly. This dilemma also concerned some concentration camp and extermination camp governors, who themselves did not physically participate directly in the crimes they themselves commissioned. Finding a solution to this burning

13 See also: Herbert Reginbogin and Christoph Safferling, *The Nuremberg Trials*: *International Criminal Law Since 1945* (München, 2006).

14 The Tribunal in The Hague does not refer directly to the Radbruch formula, but it appears to be an alternative in difficult legal situations (particularly in international law): where legal norms are helpless, reference is made to the philosophy of law. The German courts referred directly to the Radbruch formula in so-called "Mauerschützen" cases, that is, soldiers shooting at people trying to force their way over the Berlin wall. For more details see: Marcin Lubertowicz, 'Lex iniustissima non est lex: Gustav Radbruch's Formula as an Alternative in the International System of Human Rights Protection', *Studies of Erasmiana Wratislaviensia,* 4 (2010), 361-78.

15 Charter of the International Military Tribunal, available at: http://avalon.law.yale.edu/imt/imtconst.asp [16 July 2019].

16 Cyprian and Sawicki, *Walka*, 27.

problem was especially pressing since there were pending trials before American and British courts even before the commencement of the Nuremberg Trials, not to mention in their course.[17]

Legal structures enabling judgment of people who had not committed crimes directly existed both in Great Britain and in the United States. In British law, this was the concept of conspiracy, and in American law the concept of connivance. Both systems allowed passing judgment on organized crime or economic crime.[18] In American judicial case-law, the actions of one participant in connivance with a group of criminals can be attributed to each group member under this provision. Thus there was a number of perpetrators accused of the joint commitment of a crime, and the prosecutor's office had to prove that the accused did participate in a joint plan and were aware of its criminal objectives. The adoption of such an assumption in judging German criminals also made it possible to examine their affiliations with some organizations as participation in a conspiracy to stage a war of aggression. This concept was promoted since 1944 by the American lawyer Murrey C. Bernays, while submitting consecutive memorandums to the American government, suggesting the use of the concept of conspiracy or of connivance, in order to put on trial not only individual people, but also organizations such as the Gestapo, SS, or SA.[19] He suggested that the tribunal, which would have to judge war criminals, should link the criminal acts with the doctrine and policy of the Third Reich.[20] Furthermore, he believed that members of these organizations should automatically be arrested as suspected participants in a conspiracy. Ultimately, the concept of "the common plan" aimed at aggression or domination of other nations was used in the prosecutions and trials that took place even before the Nuremberg Trials.[21] The English used this

17 The biggest of them is the trial of the Bergen-Belsen (17.10.-17.11.1945), Dachau (15.11.–13.12.1945) and Mauthausen-Gusen (29.3.-13.5.1946) concentration camp staff.

18 Michał Królikowski, *Odpowiedzialność karna jednostki za sprawstwo zbrodni międzynarodowej* (Warszawa, 2011), 148-54.

19 Shane Darcy, *Collective Responsibility and Accountability Under International Law* (Leiden, 2007), 200; see also: Stanislaw Pomorski, 'Conspiracy and Criminal Organisations', in George Ginsburg and Vladimir. N. Kudriavtsev (eds), *The Nuremberg Trial and International Law* (Boston, 1990), 213-48; on the perspectives of particular powers: Reginbogin and Safferling, *The Nuremberg Trials*.

20 Darcy, *Collective*, 199.

21 Darcy, *Collective*, 201; see also: Wolfgang Form, 'Justizpolitische Aspekte west-alliierter Kriegsverbrecherprozesse 1942-1950', in Ludwig Eiber and Robert Sigel, *Dachauer Prozesse: NS-Verbrechen vor amerikanischen Militärgerichten in Dachau 1945-1948* (Göttingen, 2007), 41-66.

concept in the trial of the Bergen-Belsen staff,[22] and in November 1945, in the trial of Almelo, the British Military Court stated directly that "group members are responsible on equal terms with a man who fired the actual shot."[23]

The American military prosecutor William Denson (the main prosecutor in the trials of the Dachau and Mauthausen-Gusen concentration camp staff members) also used "the common plan" formula which, despite the objections of many lawyers (American defence attorneys tried to question it), allowed accusing persons (among others, concentration camp commandants) who did not commit crimes directly but consciously contributed to achieving the objectives of a criminal system.[24] This concept turned out to be effective: Denson accused one hundred and seventy-seven camp officers – all of whom were found guilty, ninety-seven of whom were sentenced to death and fifty-four to life imprisonment.[25] The words "common design" were to be used regularly in indictments and the operative parts of sentences.

This concept evoked howls of protest from lawyers unacquainted with the common law regime, notably the French, who demanded adherence to the "continental" principles of individual penal liability. But this solution made it possible in Nuremberg to judge the leaders of the German Reich and was reflected in the IMT Statute, in Article VI: "The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility: crimes against peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or

22 *The Belsen Trial, Trial of Josef Kramer and 44 Others,* British Military Court, Luneburg, 17 September–17 November 1945, Case No. 10, Law Reports of Trials of War Criminals, vol. 1, 4.

23 The trial before the British Military Court in Almelo, in the Netherlands, where 4 Germans were accused of killing English POWs and Dutch civilians, *The Almelo trial. Trial of Otto Sandrock and three Others,* British Military Court for the Trial of War Criminals, Almelo, 24-26 November, Case no. 3, Law Reports of Trials of War Criminals, vol. 1, 35.

24 See also: Joshua Greene, *Justice at Dachau: The Trials of an American Prosecutor* (New York, 2012), 37-54.

25 'Extract from the Review of Proceedings of the General Military Court in the case of US vs. Weiss, Ruppert et al, held at Dachau', in *Trials of War Criminals before the Nuremberg Military Tribunals*, vol. 1, Nuremberg October 1946–April 1949, 289-98.

assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing."

Simultaneously, article VII emphasized that: "The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment."[26]

In this case, the primary aim is to emphasize the penalization of crimes committed either individually or as part of an organization and to use further in the text of the Anglo-American legal structure the formula: *participation in a common plan or conspiracy.* Finally, the Nuremberg principles recognized that the preparation of, or planned aggression involving unprovoked invasion constitutes a conspiracy.[27] The Tribunal did not consider prosecutors' motions to punish participation in a conspiracy in relation to three types of crimes stipulated in the statute. Thus, it did not refer either to war crimes or to crimes against humanity.[28]

Another doubt raised by Western jurists was the violation of two legal principles: *nullum crimen sine lege* (*nulla poena sine lege*) and the principle of *lex retro non agit*. These charges referred to the principles of retroactivity of the law in regard of crimes against peace and crimes against humanity that were introduced in Nuremberg. There were no such regulations before in international law which would allow judging and punishing mass crimes planned and performed by a state apparatus. But in 1944, the Polish lawyer Rafał Lemkin coined and defined the term *genocide*, translated later into Polish as *ludobójstwo.*[29]

The Charter of the International Military Tribunal referred to "crimes against humanity", but the term *genocide* soon gained common currency. Since these legal terms (crimes against humanity and crimes against peace) were created to cover Nazi crimes *post facto*, many lawyers had doubts whether the fundamental principles of law were not being violated when judging war criminals.[30] The opponents of retroactive laws emphasized that the victorious powers used the same methods as the Nazis when they took power in Germany in 1933. In response to the memorandum of the German Ministry

26 United Nations, Agreement for the prosecution and punishment of the major war criminals of the European Axis, 8 August 1945, 82 U.N.T.C. 280, available at: http://www.refworld.org/docid/47fdfb34d.html [16 July 2019].

27 See Ilias Bantekas and Susan Nash, *International Criminal Law* (London, 2003), 330; also Dróżdż, *Odpowiedzialność*.

28 Cyprian and Sawicki, *Walka*, 27.

29 Rafał Lemkin, *Axis Rule In Occupied Europe: Laws Of Occupation, Analysis Of Government, Proposals For Redress (Washington 1944),* available at: http://www.preventgenocide.org/lemkin/AxisRule1944-1.htm [16 July 2019].

30 Jung, *Die Rechtprobleme*, 137-38.

of Justice entitled *The National Socialist Criminal Law,* the order came to simply deviate from warranty criminal law.[31]

In 1947 a debate between outstanding German lawyers – Gustav Radbruch, Hodon Freiherr von Hodenberg and August Wimmer[32] – was held in the prestigious *Süddeutsche Juristenzeitung*. Gustav Radbruch unequivocally opted for the Nuremberg legislation, referring to the primacy of natural law. He believed that legislation categorising the crimes of the Nazi government as criminal offences did not go beyond the principle of *lex retro non agit,* since the written law only covered those acts which, at the time of their commitment, were deemed to be crimes regulated by superior norms, that is natural law. August Wimmer believed that the principle of *lex retro* had been breached but the Allied law should be used nevertheless owing to the enormity of the crimes in question. The completely opposite position was taken by von Hodenberg, who was a declared enemy of the Allied legislation. He believed that the retroactive character of these regulations was in conflict with the basic principles of law. What is interesting, like Radbruch, he referred to "super-statutory" law as belonging to the basic and inalienable canons of the *lex retro non agit* principle.

To recapitulate, the Allied law ultimately formulated in the so-called Nuremberg principles was controversial in many aspects; it breached customs which were widespread and respected in international law and in national legal provisions. However, it should be remembered that within the legal community itself, there were diverse interpretations of various legal regulations and many attitudes based on differing law school doctrines. In the dispute with positivists, who undeniably had no problem with the wish to punish war criminals, axiology prevailed. It is obvious that the post-war criminal trials, both before Allied and Polish courts, could only take place because they operated by reference to super-statutory arguments. What was decided not only embodied a generally shared sense of "justice", but also the political will of the authorities.

31 Władysław Wolter, 'Prawo karne pod znakiem swastyki', in Marek Maciejewski and Maciej Marszał (eds), *Pod znakiem swastyki: Polscy prawnicy wobec Trzeciej Rzeszy 1933-1939, Wybór pism* (Kraków, 2005), 341.

32 Hodo Freiherr von Hodenberg, *Zur Anwendung des Kontrollratsgesetzes Nr. 10 durch deutsche Gerichte,* 113-21; August Wimmer, 'Die Bestrafung von Humanitätsverbrechen und der Grundsatz "nullum crimen sine lege"', *Süddeutsche Juristen-Zeitung*, 2 (March 1947), 123-9; Gustav Radbruch, 'Zur Diskussion über die Verbrechen gegen die Menschlichkeit', *Süddeutsche Juristen-Zeitung*, 2 (March 1947), 131-5.

The Debate on the Punishment of War Criminals and the Practice of the Polish Judicial System

Traces of the debates of western jurists can be found in the Polish subject literature, but they cannot be seen as anything more than *post facto* comments. Among others, the prosecutors Tadeusz Cyprian and Jerzy Sawicki spoke dismissively of legal "hair-splitting",[33] unequivocally classifying the dilemmas of the western lawyers as an aversion to passing judgment on criminals or even of harbouring the desire to "shield the major war criminals".[34] This often untrue interpretation was no doubt fuelled by political exigencies and pressure from the new "People's" authorities which manifested itself in the assertion that the only "consistent advocate of punishing war criminals and supporter of the need to formulate the principles of penalizing war crimes, and all acts which constitute preparation for aggression was the Soviet Union." Prosecutor Mieczysław Siewierski assessed these dilemmas in a more moderate and less political manner: "The resistance of the western lawyers against this judiciary undoubtedly resulted from deep-seated conservatism, from thinking habits and the strength of tradition. … Although the arguments "against" blurred the correct lines of the western governments' proceedings for a long time, they were however all ultimately rejected, the expression of which was the establishment of the International Military Tribunal."[35]

IMT notices in the Official Journal in 1947 were binding on the Polish judiciary although, in practice, they did not have a great impact on the court proceedings.[36] A new departure of a kind for Polish judicature was the possibility of prosecuting and punishing members of organizations recognized as criminals by the IMT. In fact, an amendment to that effect was introduced in December 1946.[37]

Polish lawyers involved in the work of the Supreme National Tribunal faced the same challenges as lawyers in the Nuremberg Trials, including minor changes related to procedural conventions, like the possibility for prosecutors to make opening speeches instead of having acts of indictment read out, as was the Anglo-American custom adopted at Nuremberg. The trials

33 Cyprian and Sawicki, *Walka*, 7.

34 Ibid., 8.

35 Mieczysław Siewierski, 'Wpływ instytucji procesu norymberskiego na postępowanie przed Najwyższym Trybunałem Narodowym', in *Norymberga-nadal otwarty rozdział historii: On the XXX anniversary of the sentence of International Military Tribunal* (Warsaw, 1977), 141-2.

36 *Dziennik Ustaw Rzeczypospolitej Polskiej*, 1947, no. 63 item 367 (Journal of Laws of the Republic of Poland, further quoted as Dz. U.).

37 It was an amendment of the Decree on the scale of penalties for Fascist-Nazi criminals responsible for crimes, the abuse of civilians and captives, and for traitors.

were most accurately summarized by prosecutor Mieczysław Siewierski: "It can be concluded that both judicial systems [before the IMT and Supreme National Tribunal –JL], though of different origin, tradition and purpose, were, nonetheless, similar to each other in their significant issues … it is difficult to deny that these were the courts of the victors trying the vanquished, but (courts) which implemented the wishes of the victors in such a way that it was not revenge against the defeated, but punishment meted out in accordance with the principles of law and morality – so that it returned sound verdicts in which punishment was borne only by those who were proven guilty following ordinary trial procedures."[38]

Polish judiciary grappled in its own way with the problem of passing judgments on concentration camp governors and staff members (including Rudolf Höss), as well as representatives of the administrative authorities in Poland's occupied territories (notably the likes of Josef Bühler and Arthur Greiser). Although they issued orders leading to countless deaths, they did not commit any crimes directly. Prosecutors who had to formulate charges against these defendants were faced with a particularly awkward task. Their objective was not only to punish war criminals, but also to set the course in a new field of law in Poland and show the world the enormous volume of crimes committed against the Polish nation (as opposed to 'against humanity' as was the case at Nuremberg). The point was to expose the criminal logic and objectives of the German occupation of Poland, and the tools and methods employed by the Nazi regime. The ultimate aim was to prove, indubitably, the existence of a criminal system that was created by the Nazis in German-occupied Polish territories.[39]

Mieczysław Siewierski, one of the Polish prosecutors, defined this concept in the following way: "the criminal system, used by Nazism from the outbreak of the war to its finale, aimed at the destruction of the whole Polish nation, together with its cultural and material achievements. This system developed beforehand and implemented to its full extent by the criminal leadership and henchmen of Nazi organizations … [who] used every opportunity to destroy our nation.[40] There were provisions in the Polish Penal Code of 1932 concerning incitement and aiding and abetting crime, which could be applied to those who did not commit crimes directly.[41] There were, however, no terms for 'perpetration' and 'co-perpetration', which would more adequately correspond to the crimes subject to judgment. Thus in Pol-

38 Siewierski, *Wpływ*, 145.

39 In some aspects, the concept of a "criminal system" was reflected in the idea of "the common plan", the common elements of which include, among others, deliberate participation in the system/plan and awareness of its criminal objectives.

40 Siewierski, *Wpływ*, 140.

41 Dz. U., no. 60 (1932), item 571.

ish practice, the term "instigator", "helper", and "indirect perpetrator" were used. Moreover, in the first trial before the Supreme National Tribunal (of Arthur Greiser), the term "did participate" was used.[42]

The Polish wartime experience made social approval for punishment of criminals a foregone conclusion. However, it is also necessary to emphasize that for the jurists of the Supreme National Tribunal and other courts involved in the prosecution and punishment of crimes against the Polish nation, it was obvious that only those criminals who were proven guilty could be punished, although it was not necessary for one to have directly participated in a crime to be punished for its commitment. In the speech for the prosecution against Ludwig Fischer, the governor of the Warsaw district of the General Government, the Supreme National Tribunal prosecutor Jerzy Sawicki characterised what was a new type of crime in the following way: "A criminal in a white collar does not like brutality. He says that he is only acting in the interests of an abstract state. A further peculiarity of these acts is connected with it. These criminal teams reveal a great resemblance to criminal cartels and trusts."[43] The Supreme National Tribunal judges very meticulously determined the form of the crime and the persons specifically accused of participating in its commitment. Hence, in the operative parts of the sentences handed down in the Greiser and Höss cases, the attribution of direct participation in killing their victims was removed from the charge sheet.

The Basic Legal and Institutional Punishment of German Criminals in Poland

When Soviet troops entered Poland and enforced a new political order at the point of a bayonet, one of the fundamental tasks of the reconstituted judiciary was to develop legal standards according to which it was possible not only to judge the German criminals, but also to create a proper legal system.[44] Only an outline of this system will be presented below.

Both pre-war regulations (among others, the Polish Penal Code of 1932 and the Code of Criminal Proceedings of 1928) and the legal regulations adopted by the communist authorities provided the legal basis for punishing

42 Siewierski, *Wpływ*, 144.

43 Tadeusz Cyprian and Jerzy Sawicki, *Oskarżamy* (Kraków, 1949), 155.

44 Polish legislation, to some extent, was based on international law, but it should be remembered that the Nuremberg acts, namely the most important legal acts concerning the prosecution of mass crimes, were created later than the first Polish legal acts. For more information see Czesław Pilichowski, Bernard Franczyk, Włodzimierz Hanczakowski, and Krzysztof Staszko (eds), *Ściganie i karanie sprawców zbrodni wojennych i zbrodni przeciwko ludzkości. (Wybór dokumentów).* (Warsaw, 1978).

war criminals. The Polish judiciary focused at that time on four aspects of investigating, prosecuting and punishing war crimes:

1. the establishment of special regulations of material criminal law, namely, drawing up a register of acts, principles and measures regarding their punishment, so as to classify war crimes and collaboration effectively (the PKWN Decree of 31 August 1944 with later amendments – the so-called *August Decree*);
2. the establishment of a special judiciary to try war criminals (Special Criminal Courts, the Supreme National Tribunal);
3. the appointment of a special institution, which would record and examine evidence associated with war crimes (the Main Commission and District Commissions to Examine German Crimes in Poland);
4. the establishment of international cooperation in prosecuting and punishing war criminals (the Polish Military Mission for the Investigation of German War Crimes, Delegate of Poland at the United Nations War Crimes Commission).

The most important legal act was undoubtedly the so-called *August Decree*, which specified criminal acts subject to judgment.[45] They were:

1. participation in killing, abusing or repressing civilians or POWs;
2. association with harmful actions against people for political, national, religious or racial reasons by way of their imprisonment and extradition;
3. forcing any actions from persons subject to repressions by the German authorities by blackmail or other harmful forms of coercion;
4. participation in criminal organizations, appointed or recognized by the German authorities, formed to commit crimes against humanity, peace or war crimes (SS, NSDAP, SD, Gestapo).

The above-mentioned acts were supposed to be subject to punishment in the period between 1 September 1939 and 9 May 1945. Article 1 of the *August Decree* (points 1 and 2) was not to be disputed by judges as to the selection of punishment – it envisaged death as the only possible sanction.

The Special Criminal Courts were set up to accelerate prosecution and court procedures (the indictment was to be filed within two weeks, the date of the hearing was to be designated within forty-eight hours and the sentence was to be announced immediately after the hearing and the judges' meeting).[46] Judgments of the Special Criminal Courts were final and binding. The only possibility of avoiding the adjudicated punishment was to appeal for clemency to President Bolesław Bierut. The Special Criminal Courts

45 Dz. U., no. 4 (1944), item 16.
46 Dz. U., no. 4 (1944), item 21.

operated to 17 October 1946 when, by special decree, their competencies were transferred to district courts.

The most significant thing, however, was the appointment of the Supreme National Tribunal pursuant to the Decree of 22 January 1946.[47] It was to judge war criminals extradited from any of the German occupation zones. Polish legislation did not have any precedents in its history of delivering judgments against similar categories of perpetrators. Therefore, the establishment of such a Tribunal, consisting of outstanding specialists, was aimed not only at judging particular persons, but also at the development of the necessary procedures and legal regulations. Supreme National Tribunal verdicts were final and only those sentenceed to death could appeal to the KRN President. The Supreme National Tribunal operated from 18 February 1946 to 5 August 1948. The first two Supreme National Tribunal trials, of Arthur Greiser and Amon Göth, were held even before any Nuremberg Trial sentences were delivered. The Supreme National Tribunal hearings took place in front of a panel of three judges and four jurors, and during secret meetings of the three-man panels of judges without the jurors. Being aware of the trial-related difficulties, the Supreme National Tribunal included eminent Polish jurists – prosecutors, judges, defence attorneys appointed *ex officio*.

In 1946, the Polish Military Mission for the Investigation of War Crimes was established, which was supposed to ensure the effective extradition of war criminals to Poland, but, because of financial problems, extradition applications were submitted only for the most important criminals. The estimated number of those extradited to Poland stands at 1,800,[48] of whom 1342 were Germans.[49]

47 'Dekret o Najwyższym Trybunale Narodowym' in Pilichowski, Franczyk, Hanczakowski, and Staszko (eds), *Ściganie i karanie sprawców zbrodni wojennych i zbrodni przeciwko ludzkości (wybór dokumentów)*, 488-92.

48 The total number of war criminals extradited to Poland was recognized as unsatisfactory and the communist authorities blamed the western superpowers for that. However, it is a fact that from mid-1947 neither the British nor American authorities made it difficult to extradite war criminals to Poland, provided the required documentation was presented. Thus the Polish side was also to blame in that it was too late in appointing the Polish Military Mission and did not enure the appropriate technical and financial resources for it to function properly. Furthermore, the members of the mission were not informed about the course of trials, and therefore they could not inform the Allied authorities on the fate of those held in custody. Elżbieta Kobierska-Motas, who examined this issue, pointed out that the reluctance of the Allied authorities to extradite war criminals to Poland was also due to the fact that Polish courts handed down relatively mild sentences; see Elżbieta Kobierska-Motas, *Ekstradycja przestępców wojennych do Polski z czterech stref okupacyjnych Niemiec 1946-1950*, vol. 1, (Warsaw, 1991), 90-118.

49 Others are mainly Volksdeutsche (425) and persons of different nationalities, typically Austrians, Poles, Ukrainians and Jews; see Elżbieta Kobierska-Motas, *Ekstradycja*

Trials – General Characteristics

An analysis of the trials of German criminals in Poland in the immediate post-war years reveals it was decreed that there should be express differentiation between those in which the accused were war criminals, performing the most important functions in the structures of the occupation authorities or concentration camp staff members (their cases were mostly examined by the Supreme National Tribunal), and those less spectacular cases most commonly pending before the Special Criminal Courts. The first, with the participation of outstanding Polish jurists, were characterized by diligence, thorough preparation and a relatively moderate degree of politicization. The trials belonging to the second category were undoubtedly of much lower priority.[50]

The preparation of trials in terms of charges and procedures, legal staff and logistics constituted a great challenge for Poland. There were few experienced judges, attorneys or prosecutors; the trials were held in difficult conditions, under strong pressure from society which expected nothing less than severe punishment of its criminal oppressors. Those sentiments which were based simply on a willingness to take revenge were often fanned by the press, especially the local variety.[51] Equally important were the instructions of the authorities which put pressure on the appropriate selection of jurors. They composed the so-called civil factor. The list of jurors was determined by the KRN Presidium; they were chosen from among the candidates presented by the provincial national councils. They were supposed to be persons who "took or take active part in either military fighting with the invaders, or in civil self-defence and resistance units, including propaganda campaigns

przestępców wojennych do Polski z czterech stref okupacyjnych Niemiec 1946-1950, vol. 2, (Warsaw, 1992), 21-2.

50 Opinions should be formulated with care, since owing to the complex ethnic situation in different regions of Poland, Special Criminal Court sentences may have seemed inconsistent. With regard to Małopolska (southern Poland), the assessment is clearly negative. With regard to Silesia, this issue is tackled by Adam Dziurok in: *Władze komunistyczne a byli członkowie organizacji nazistowskich na Górnym Śląsku w latach 1945-1956* (Warsaw, 2000), with regard to Gdańsk: Dariusz Burczyk, 'Specjalny Sąd Karny w Gdańsku (1945-1946): Przyczynek do monografii', *Przegląd Archiwalny Instytutu Pamięci Narodowej*, 7 (2014), 289-312.

51 Some press titles generally questioned the sense of the trials, owing to the "obvious guilt of those accused". Headlines like: 'Czy adwokat może bronić zdrajców narodu?' (May an attorney defend the traitors of the nation?) (*Robotnik Pomorski*, May 30, 1946) were to appear. The Supreme Bar Council in Warsaw ordered attorneys to submit an additional written motivation statement on why they wished to defend persons accused of war crimes.

or the reconstruction of Polish Statehood campaign."[52] Most often, Supreme National Tribunal juror panels were composed of parliamentary deputies.

The most important trials, among others, of the notorious concentration camp oppressors, who were responsible for the deaths of prisoners of various nationalities, were closely followed by foreign observers. In the West, the impartiality of Polish courts was called into question, like the new authorities, which were not perceived as trustworthy.

The extraordinary legal regulations were binding on the Special Criminal Courts.[53] The rule of no right of appeal was adopted,[54] indictment would not require substantiation, it was not necessary to conduct investigations other than cursory preliminary inquiries, and there was obligatory remand in custody for defendants. Once an investigation was closed, the prosecution had to bring the indictment to court and the term of the hearing was expected to be set with a deadline of no more than forty-eight hours upon its receipt. Sentences announced after a short trial were final and binding. Those sentenced to death could apply to the President of the Home National Council (KRN) for a pardon. Judges and prosecutors of special courts and courts of appeal had equal rights. Jurors had the same rights as judges – the only difference being that jurors were unable to chair hearings. The right of defence attorneys to participate in hearings was inalienable, and, for the most important trials, defence attorneys were appointed *ex officio*.

Organization of Supreme National Tribunal Trials in Kraków

Lesser Poland (Małopolska) had a special place on the 'map of justice' for German war criminals, because the majority of trials before the Supreme National Tribunal were held in Kraków. It was impossible to organize the trial of Rudolf Höss in Kraków despite the fact that Kraków lawyers, led by Jan Sehn, were prepared for it.[55] Amon Göth was the first war criminal to stand

52 Zbigniew Biegański, 'Kara śmierci w orzecznictwie Specjalnych Sądów Karnych w Polsce (1944-1946)', *Echa Przeszłości*, (Olsztyn, 2004), vol. 5, 185.

53 Dz. U., no. 4 (1944), item 21.

54 The principle of no right to appeal obtained until the establishment of the Supreme National Tribunal (NTN) in January 1946. The first NTN prosecutor was entitled to file cassation complaints (i. e. file for the annulment of a judicial decision) regarding Special Criminal Court verdicts.

55 In the case of Rudolf Höss, who was intentionally tried separately, regardless of the simultaneous proceedings against the entire Auschwitz camp personnel, the efforts were shared by three cities: Katowice (since Oświęcim [Auschwitz] was then in the district subordinate to the Court of Appeal in Katowice), Kraków (since the investigation was conducted by the District Commission of Inquiry into German Crimes

trial before the Supreme National Tribunal in Kraków. This trial ran from 27 August to 5 September 1946 in the District Court at Senacka Street.[56] Göth was sentenced to death by hanging; the sentence was executed on 13 September 1946 at Montelupich prison in Kraków. The biggest trial in Poland – that of forty staff members (including five women)[57] of the Auschwitz camp – was held in the National Museum in Kraków.[58] Many representatives of national tribunals from the Allied countries were there to witness the proceedings. Josef Bühler was judged in the last trial before the Supreme National Tribunal (from 17 June to 10 July 1948 in the District Court at Senacka Street). The sentence, death by hanging, was executed on 22 August 1948 in Kraków's Montelupich prison.[59] All trials were public. The Supreme National Tribunal secretary's office issued public entry cards which entitled the bearer to witness only one hearing of the Tribunal. The first rows of seats were reserved for VIPs, government representatives and the press. There were also separate seats for foreign observers. Family members of the accused, notified by the Red Cross, could be present at all these hearings. Simultaneous interpretations into four languages were provided in these courts.[60]

It is also worth remarking on the atmosphere during the court hearings, especially in the most spectacular ones. Maintaining law and order in court was required especially by the Supreme National Tribunal judges. A striking fact emerging from the descriptions of the trials is the calmness of those in the public gallery, among whom, after all, were the victims of crimes and their families. Despite great emotions, no serious incidents which could have disturbed the course of these trials occurred.[61] On the other hand, angry

in Kraków, and therefore the whole investigation material was in that city) and Warsaw (for prestigious reasons)

56 See: AIPN GK 196/39-45, Sentence in the case of Amon Goeth, 220 and the following; Martyna Grądzka, 'Wszystkim tym zarzutom przeczę zdecydowanie i stanowczo: Proces Amona Leopolda Götha przed Najwyższym Trybunałem Narodowym w Krakowie', *Zeszyty Historyczne WiN-u*, 35 (2012), 85-100.

57 They were: Maria Mandl, commandant of the women's camp – who was sentenced to death; and the overseers Therese Brandl – death sentence, Luise Danz – life imprisonment, Hildegard Martha Lächert – 15 years in prison and Alice Orlowski – 15 years in prison (see: AIPN Kr 425/351, Operative part of a judgment in the Auschwitz trial, 59, 61).

58 AIPN Kr 1/1381, Stanisław Kosiński, 'Przygotowania do procesu oświęcimskiego w Krakowie', *Dziennik Polski*, (October 16, 1947), 22.

59 See: AIPN GK, 196/245, Sentence in the case of Josef Bühler, 1 et seq.

60 AIPN Kr 1/1381, Stanisław Kosiński, 'Przygotowania do procesu oświęcimskiego w Krakowie', *Dziennik Polski*, (October 16, 1947), 22.

61 The atmosphere in the courtrooms was described in numerous newspaper reports and accounts from trials; see for example AIPN Kr 1/1381, 'To był rzetelny proces, rozmowa z Janem Brandysem', *Tarnowski Magazyn Informacyjny*, 4/255 (January 27, 1985), 27; Janusz Gumkowski and Tadeusz Kułakowski, *Zbrodniarze hitlerowscy*

exclamations addressed to the defendants were heard in front of the buildings in which the trials took place, and thus these defendants were given bodyguard protection.

Jurists participating in these trials not only had to be experienced, but also resilient to general public pressure. Judges and particularly *ex officio* defence attorneys were in a difficult situation. Many of them asked to be exempted from this duty due to personal reasons, but their applications were turned down.[62] In the Auschwitz trial and the trial of Josef Bühler, the *ex officio* defence counsel was Bertold Rappaport.[63] As one of the prosecutors, Jan Brandys, remembers "among the defence attorneys was … Rappaport; he was older, and very well-known in Kraków. He asked the court to be exempted from his duties as defence counsel since he belonged to the Jewish nation and it was difficult for him to defend those who committed such horrendous crimes against Jews. His application was not taken into consideration."[64]

In the group of prosecutors, special attention should be paid to Mieczysław Siewierski and Jerzy Sawicki. Siewierski, a doctor of criminal law at the University of Łódź, was at that time the first prosecutor of the Supreme Court. After the war, as a Supreme National Tribunal prosecutor, he brought the case for the prosecution against Arthur Greiser. Immediately after the end of a subsequent trial of Albert Forster, Siewierski himself was arrested on charges brought under the *August Decree*. He was accused of prosecuting communist activists before the war and appointing judges to work in commissions basing their legitimacy on "the Fascist Constitution" of 1935.

przed Najwyższym Trybunałem Narodowym (Warsaw, 1961); Cyprian and Sawicki, *Oskarżamy*; Tadeusz Cyprian, and Jerzy Sawicki (eds), *Siedem wyroków Najwyższego Trybunału Narodowego* (Poznań, 1962).

62 For more information on this topic see: Marcin Zaborski, 'Czy bronić "zdrajców narodu", "zbrodniarzy faszystowsko-hitlerowskich" i "Volksdeutschów"? Uchwała Naczelnej Rady Adwokackiej z dnia 25 maja 1946 r. w sprawie udziału adwokatów w procesach o zdradę narodu lub o rehabilitację wyłączonych ze społeczeństwa', *Palestra*, 1-2 (2013), 234-47.

63 Gumkowski and Kułakowski, *Zbrodniarze hitlerowscy*, 87, 179.

64 AIPN Kr 1/1381, 'To był rzetelny proces, rozmowa z Janem Brandysem', *Tarnowski Magazyn Informacyjny*, 4/255 (January 27, 1985), 27. A similar situation occurred in Poznań, where both of Arthur Greiser's nominated defence attorneys, Stanisław Hejmowski and Jan Kręglewski, unsuccessfully applied for release from this duty. In a letter to the Supreme National Tribunal, Hejmowski justified his request in the following way: "No Wielkopolska attorney can be a defence attorneys of Greiser … I myself was banished by the German occupation authorities from Poznań to the General Government in December 1939, and I was deprived of the fruits of my achievements attained in the course of ten years of professional practice. During the war I lost two brothers killed by German hands. In truth, it is difficult to require me now to be Arthur Greiser's defence attorney" (cited after: Gumowski and Kułakowski, *Zbrodniarze hitlerowscy*, 4-5).

Siewierski was put in the same prison and the same cell as Albert Forster. He was sentenced to five and a half years in prison.[65] Prosecutor Jerzy Sawicki, a Lviv attorney of Jewish descent, specialized in international criminal law. As the Home National Council (KRN) Delegate, he represented the Polish judiciary at the Nuremberg Trials, and later he was a Supreme National Tribunal prosecutor – the main prosecutor in the trials of Arthur Greiser and Josef Bühler and the Auschwitz camp staff. He was the co-author of a publication issued in 1945 devoted to proceedings against criminals, which served as a kind of guide for lawyers. He was regarded as a pliant stooge of the "security apparatus". After 1948, Sawicki, as a university lecturer and co-author of the binding interpretation of criminal law, co-created the Stalinist legal system of the People's Republic of Poland (PRL).[66]

All the accused persons, both of higher rank (Josef Bühler) and ordinary concentration camp staff members, defended themselves with the same arguments, namely, that they were simply obeying orders and were unaware of their effects. Furthermore, they argued that they did not directly participate in the crimes they were accused of or simply denied their criminal acts or sought to diminish their own guilt. An exception was the Auschwitz governor, Rudolf Höss, who took the entire responsibility for all crimes in the camp on himself. For the most part, he did not defend himself during the trial, claiming that he simply executed orders, but he did not deny his guilt. All those sentenced to death submitted requests for clemency to Bolesław Bierut, the President of the Home National Council (KRN). Only Höss did not. Upon delivery of his sentence, he thanked his attorneys and then declared that he would not apply for pardon because he was aware that it was impossible for him to expect it.[67] But not all cases were as clear-cut as that. For example, the President exercised his power of clemency in regard of

65 'Nie zamierzam podejmować żadnej polemiki – Wokół mitu "bydgoskiej krwawej niedzieli", z prof. Witoldem Kuleszą rozmawiają Paweł Kosiński i Barbara Polak', *Biuletyn Instytutu Pamięci Narodowej*, 12-1/35-36 (2003-2004), 16-7.

66 Jerzy Sawicki and Bolesław Walawski, *Zbiór przepisów specjalnych przeciwko zbrodniarzom hitlerowskim i zdrajcom narodu, z komentarzem* (Kraków, 1945). Zbigniew Błażyński, émigré journalist in Munich (Radio Free Europe) and London (The Polish Daily), wrote: "The Ministry of Public Security had in their files evidence that Sawicki cooperated with the Gestapo in the Lwów (Lemberg, Lviv) ghetto. Sawicki knew about these files which guaranteed his total obedience. Eventually, the case became widely discussed and Sawicki was dismissed from his post as a prosecutor, but before he left, he worked well with the secret police"; see: Zbigniew Błażyński, *Mówi Józef Światło: Za kulisami bezpieki i partii 1940-1955* (Warsaw, 2003), 236.

67 Gumkowski and Kułakowski, *Zbrodniarze hitlerowscy*, 172.

Johann Paul Kremer and Arthur Breitwieser, changing their death sentences to life imprisonment.[68]

Upon analysing the defence attorneys' speeches (among others, those of Stanisław Druszkowski, Mieczysław Kossek, Bertold Rappaport), it can be stated that the defence lines were convergent with the arguments of the defendants themselves: the absence of direct perpetration, lack of awareness of the effects of their own orders, the impossibility of a proper moral assessment of their acts owing to the demoralisation of individuals by the system (the SS was "a school for murderers" and Auschwitz was "the product of this school") were assumed.[69] Several recurring themes could be extracted from the prosecutors' speeches (among others, of Tadeusz Cyprian, Stefan Kurowski, Jerzy Sawicki, Mieczysław Siewierski, Mieczysław Szewczyk).[70] Each prosecutor pointed to the irrelevance of the legal regulations with regard to the crimes that were committed. Some also emphasized how much effort it cost them to examine those crimes in the most objective and fair manner possible. It was stressed by, among others, prosecutor Sawicki, in a very dramatic speech: "I am to speak about the guilt of the accused persons, i. e. I have to express their guilt in words. Your Honours, words are meant for humans and what happened there, is inhuman. … I know that normally when a prosecutor stands before the court and asks for a death sentence, the court, the prosecutor and those in the gallery shudder with horror. I can feel my helplessness when in this room I pronounce the words 'death penalty'."[71]

While the reliability of proceedings in the main war criminal trials should be clearly positively evaluated, the activities of the Special Criminal Courts were already being criticized at that time. Dispensing justice on the basis of the *August Decree*, which exclusively and non-appealable imposed the death sentence on those found guilty under Article 1, could raise significant qualms due to the frequently insufficient evidence gathered in the course of Public Security Bureau investigations and the not always reliable and credible testimonies of some witnesses.[72] Testimonies were often extorted by beat-

68 Both Johann Paul Kremer and Arthur Breitwieser were released from Polish prisons in 1958 and took up residence in West Germany.

69 AIPN Kr 1/1380, Speech of defence attorney Mieczysław Kosseka in the trial of staff of the camp in Oświęcim, 132-48, ibid., Speech of defence attorney Stanisław Druszkowski in the trial of staff in Oświęcim, 149-63. For more information see Joanna Lubecka, 'Karanie niemieckich zbrodniarzy wojennych w Polsce', in *Zeszyty Historyczne WiN-u*, 34 (2011), 11-44.

70 AIPN Kr 1/1380, Speech of a prosecutor Mieczysław Szewczyk in the trial of staff of the camp in Oświęcim, 58-94; the final speech of prosecutor Kurowski in the trial against members of the staff of the Oświęcim camp, 164-80.

71 Cyprian and Sawicki, *Oskarżamy*, 33, 41.

72 Dz. U., no. 4 (1944), item 16.

ings or threats, some defendants retracted their earlier testimonies in court on the argument that they did not speak Polish.[73] Lawyers participating in the trials were aware that the authorities mainly aimed at achieving their intended propaganda goals. Therefore, the judges sometimes did not react to complaints made by defendants, while prosecutors pressed charges in an emotional manner, even referring to defendants in a derogatory fashion. *Ex officio* attorneys usually limited themselves to formulating requests for milder sentences or imposing penalties complying with the *August Decree*, namely the death penalty.[74] Trials of those accused of war crimes were often terse and cursory affairs, and did not relate to the acts of specific persons, but to the crimes of the German occupiers. "This outright Nazi, mass murderer, sadist and miscreant, should be eliminated from Polish society forever" – we read in one of the sentences.[75]

Imprisonment

The British and American forces entering Germany in 1945 released concentration camp inmates as they progressed. The shock which they experienced seeing clearly visible evidence of crimes (crematoria with bodies of gassed victims, trains filled with corpses, piles of prisoners' bodies) gave rise to emotional reactions, frequently involving lynchings. Allied soldiers often executed concentration camp staff members or armed kapos without trial, in summary revenge. The scale of this phenomenon was not marginal and some of these events are remembered as massacres. The most famous massacre took place after the liberation of Dachau where Americans killed 560 staff members, as mentioned by an eyewitness in his book.[76] The court investigation was discontinued owing to the impossibility of determining individual guilt. The judge drew attention to the fact that the soldiers' behaviour was caused by the shock they experienced upon entering the camp.[77] Volatile emotions and numerous discussions accompanied the use of prohibited methods of

73 Biegański, *Kara śmierci*, 196.

74 Biegański, *Sądownictwo i skazani na śmierć z przyczyn politycznych w województwie pomorskim (bydgoskim) w latach 1945-1956* (Bydgoszcz, 2003).

75 Biegański, *Kara śmierci,* 197.

76 Howard A. Buechner, *Dachau: The Hour of the Avenger: An Eyewitness Account* (Metairie, Louisiana, 1989); these events were thoroughly analysed by Jürgen Zarusky '"That is not the American Way of Fighting": The Shooting of Captured SS-Men During the Liberation of Dachau', in Wolfgang Benz and Barbara Distel (eds), *Dachau and the Nazi Terror 1933-1945,* vol. 2, *Studies and Reports* (Dachau, 2002), 133-60.

77 Alex Kershaw, *The Liberator: One World War II Soldier's 500-Day Odyssey from the Beaches of Sicily to the Gates of Dachau* (New York, 2012), 320.

interrogation by British and American investigators. Several cases drew closer public attention to the extent that the American authorities initiated investigations into the alleged abuses. The most famous trials related to Dachau where e. g. the alleged killers of American POWs (Malmedy Massacre Trial) and the staff of the Dachau concentration camp were tried. In both investigations, false testimonies were extracted by torture.[78] A special commission was established (it went down in history as the Simpson commission), consisting of three judges – Gordon Simpson, Leroy Van Roden and Charles Lawrence – to examine the case in July 1948.[79] The Commission thoroughly examined sixty five proceedings in both the Malmeda and Dachau trials, and the final report confirmed that the American investigators had employed prohibited methods.[80] Upon publication of the report, under pressure of the general public (mainly German), the death penalties handed down in the Malmeda trial were commuted to life sentences.

American and British soldiers and investigators treated their German prisoners and suspects with wonton cruelty, under the influence of successively uncovered evidence of German crimes. Concentration and extermination camps on German-occupied Polish territories were liberated by the Red Army. We know that during these events, lynchings also took place however, they were attributed to Soviet soldiers. From the Polish perspective, what seems to be more interesting was the treatment of German criminals in Polish prisons and during trials.

The majority of war criminals, who faced the Supreme National Tribunal, were sentenced to death. From the moment of detention or extradition to Poland to execution of the sentence, they remained in Polish prisons. Information on the conditions they were kept in and how they were treated by their Polish fellow prisoners, guards and prison authorities is incomplete be-

78 *Malmedy Massacre Investigation, Hearings Before a subcommittee of the Committee on armed services. United States Senate, Eighty-first congress, first session, Washington 1949,* available at: http://www.loc.gov/rr/frd/Military_Law/pdf/Malmedy_hearings-2.pdf [2 January 2016]; see also: Giles MacDonogh, After the Reich: The Brutal History of the Allied Occupation (New York, 2007), 406-7.

79 Eiber and Sigel, *Dachauer Prozesse*, 70-3.

80 The report mentions, among others: beatings and brutal kickings; knocking-out of teeth and breaking of jaws; mock trials; solitary confinement; torture with burning splinters; the use of investigators pretending to be priests; starvation; and promises of acquittal; (Leroy van Roden: *All but two of the Germans, in the 139 cases we investigated, had been kicked in the testicles beyond repair. This was Standard Operating Procedure with American investigators*); see: Freda Utley, *The High Cost of Vengeance* (Chicago, 1949), 186; Eiber and Sigel, *Dachauer Prozesse*, 70-3, see also: *Malmedy Massacre Investigation, Report of subcommitee of the Committee on armed services, United States Senate, Eighty-first congress,* available at: https://www.loc.gov/rr/frd/Military_Law/pdf/Malmedy_report.pdf [2 January 2016].

cause this issue has not been comprehensively examined yet. On the basis of the analysis of prison documentation from Kraków, from the Montelupich prison where forty-three of the accused persons were kept, it is possible to make certain deductions.[81] Certainly the most important German criminals did not have worse prison conditions in Kraków than the Polish prisoners sentenced on the basis of the *August Decree*. The Germans did not complain to the prison authorities about overcrowded cells, nor about ill-treatment by prison guards.[82] They were often detained in single cells or together with other Germans. The cells in which they were kept were separated from the rest of the prison with an iron door and prisoners were under observation of the guards day and night.[83] The cells were furnished modestly but sufficiently (stool, table, wooden bunk with a straw mattress). The cells were often equipped with stoves but they were "sparingly" used. In complaints of German prisoners written by hand in Polish (probably with the help of their Polish fellow prisoners, as was indicated by the signature of the given prisoner, which was usually clearly different from the handwriting in the Polish text), they usually spoke of the all-pervading cold permeating their cells (among others, Hans Aumeier, Ernst Boepple, Amon Göth)[84] and they asked for warm clothing. Those requests were most often positively considered, as substantiated by hand annotations of the prison governor.

In describing his prison conditions, Friedrich Siebert (head of the General Government's administrative department); emphasized first of all the insufficient food rations, as a result of which many prisoners drastically lost weight.[85] An advantage was the cleanliness of the cells which, of course, were maintained by the prisoners themselves. As Siebert highlights, both Germans and Poles were treated in the same manner and, whether it was good or bad, depended on individual guards or officers on duty. However, he clearly

81 The Montelupich prison in Kraków housed all the defendants in the Auschwitz trial, including camp commandant Rudolph Höss. For prison records documenting length of stay, medical cards, the course of proceedings and private correspondence, see AIPN Kr 425/1-704.

82 Apart from "small" acts of spite, e. g. frequent switching on of light at night, see Bundesarchiv Berlin, Bühler R52 II 256a, Verhältnisse im Gefängnis Montelupich, August 47-Juli 48, Friedrich Siebert to Albert Weh's widow, 21.

83 Ibid.

84 Hans Aumeier – the deputy of commandant Höss in the Auschwitz camp, sentenced by the Supreme National Tribunal to death in the trial of that camp's personnel; sentence was delivered on December 22, 1947 (AIPN Kr 425/12); Ernst Boepple – secretary of state in the General Government administration, studied in Tübingen, Oxford, Paris, and London, Ph. D in philosophy, sentenced to death. The sentence was delivered 15. 12. 1950 (AIPN Kr 425/53); Amon Göth – commandant of the labour camp in Płaszów, sentenced to death, executed 13. 8. 1946 (AIPN Kr 425/138).

85 BArch Berlin, Verhältnisse im Gefängnis Montelupich, August 47-Juli 48, 21.

states in his account that "None of the Germans in his wing were beaten, but there were heavy-handed nudges, usually when one did not understand the guard's questions."[86] Siebert mentions that idleness and boredom were the worst in prison, in particular owing to the fact that wardens stuck to a strict supervisory routine devised to ensure that prisoners did not communicate with each other outside the cells. They received mail but no packages, although the letters spoke of numerous packages that had been sent.

The largest number of complaints on prison conditions was filed by Hans Aumeier, who wrote about the cold in his cell, malnutrition, the absence of outdoor walks, and the arbitrary acts (*Willkür*) of fellow prisoners. His letters are not so much requests as expressions of irritation at the harsh conditions he was kept in.[87] In reaction to his complaints, Aumeier was examined by a prison doctor who stated (by way of entries in his medical records) that his health condition was good and excluded malnutrition. The only documented case of a prisoner being beaten is that of Maria Mandl, who was extradited to Poland via the Czech Republic. In the Polish documentation, namely her medical records, there is the following note: "beaten by Czechs, bruises on the nose, near the ear, chin and neck, back pains. Spits blood. Allegedly."[88]

The prison documentation also contains numerous hand-written requests of German prisoners for permission to keep diaries, for tobacco rations (among others, such a request was made by Göth) or for books. Most often, however, they asked for pen and paper to write letters to their families or to make notes in preparation for their trials. The prison authorities agreed to the transfer of Wilhelm Haas,[89] who was sentenced to death, to a cell with another German and to give him a chess set.

Lawyers also paid attention to ensure appropriate conditions for defendants and convicts. In the statement of the first Supreme National Tribunal prosecutor, Tadeusz Cyprian, to the prosecutor of the Special Criminal Courts in Kraków, we read "prisoners: Dr. Jozef Buhler, Dr. Kurt Ludwik Burgsdorf, Rudolf Hoess, Amon Goeth […] will be tried by The Supreme National Tribunal, and since their hearings will undoubtedly be attended by foreign observers, I regard it as desirable to ensure that both the physical and mental condition of these prisoners is the best possible during the hearing. In view

86 Ibid.

87 AIPN Kr 425/12 (Hans Aumeier's prison file).

88 Maria Mandl (Mandel) – born in Austria, in charge of the female section at Auschwitz, sentenced by the Supreme National Tribunal to death in the trial of that camp's personnel, executed 24.1.1948 (AIPN Kr 425/351).

89 Wilhelm Haase – SS-Sturmbannführer, liquidator of the Jewish ghetto in Kraków, sentenced to death, executed on May 23, 1952 (AIPN Kr 425/189 – the prison files contain numerous misspellings of his name: Hasse's given name on his file is the diminutive Willi and not Wilhelm).

of the foregoing, I ask the prison's Board of Governors to give these prisoners the possibility of reading books on neutral subjects in German, but not journals, and further, that they be provided with the possibility to keep diaries or jot down defence notes by giving them tables, chairs, paper, pencils. And an attempt was to be made to ensure that they did not neglect their personal hygiene (clean underwear, walks)."[90] Less typically perhaps, Jan Sehn, the chairman the Regional Committee of Inquiry into Nazi crimes in Kraków, who appealed by letter for the defendant to be granted his request to have a picture of his wife and children; this letter has been preserved in Josef Bühler's file.[91]

The war criminals detained in Polish prisons were under constant medical observation. Each cell was visited by a physician every week, "a Jew who had a Polish surname, and spoke German well. His behaviour left nothing to be desired."[92] The majority of prison files contain medical records of prisoners' health problems, medical diagnoses and health assessments. Pulmonary disease, including tuberculosis, was usually mentioned. The bodies of German prisoners who were executed and those who died as a result of diseases were transported to the Department of Descriptive Anatomy of the Jagiellonian University (letters with requests for acceptance of the bodies often bore the stamp "strictly confidential").[93]

The prisoners were allowed to conduct private correspondence. All letters, both incoming and outgoing, were censored. Many of them never reached their addressees (due to censorship) like those saying farewell before execution – the originals are kept with the prison documentation. The prisoners corresponded primarily with their closest families. Many letters in the prison documentation were written by the prisoners' wives and children. When reading this correspondence, which undoubtedly requires more penetrating analysis, some recurring themes can be identified. We can find information on family life (e. g. difficult living conditions), full of assurances of affectionate love and attachment, and evidence of deep faith in the innocence of those in the dock, as well as hope (sometimes even confidence) that husbands and fathers will return home.[94] Several letters have greetings from children, their

90 AIPN Kr 425/138 (Amon Göth's prison file), 31.

91 Josef Bühler – state secretary and deputy governor (to Hans Frank), sentenced to death by the NTN, executed 21. 8. 1948 (AIPN Kr 425/63).

92 BArch Berlin, Bühler R52 II 256a, Verhältnisse im Gefängnis Montelupich, August 47-Juli 48, 22.

93 Interesting information on the fate of bodies after execution of the sentences see: Stanisław Kobiela, 'Proces załogi KL Auschwitz-Birkenau w Krakowie 1947 r.', part 4, *Wiadomości Bocheńskie*, 1/30 (2009), 20-1; Kobiela, 'Tajemnice lekarza. Wywiad z Jerzym Ludwikowskim', *Wiadomości Bocheńskie*, 4/31 (1996), 11-3, 21-5.

94 In a letter to Hermann Kirschner his wife wrote: "Lieber Hermann sei getrost und versage nicht. Du hast ja keine Schuld. Wir sind alle unglücklich geworden durch

drawings, rarely pictures, attached to them. In a few farewell letters (not sent on to their families by the prison authorities), the accused persons themselves wrote that they were innocent and were about to die without any sense of guilt. An exception was Rudolf Höss, who during the trial underwent "an internal conversion" in the religious sense, but also by way of revaluation of the ideas he served.[95] It is worth mentioning that the credibility, or even frankness of Höss's statements is sometimes questioned by western historians. When comparing investigation methods in the Dachau or Nuremberg trials, by analogy of a kind, they claim that descriptions of nearly ideal prison conditions and humane treatment by the Polish judiciary and prison guards were induced by promises made to him, or by other techniques (meaning physical or mental torture).[96]

Reminiscences of Polish political prisoners suggest that German prisoners were used for cleaning up after executions (among others, they packed the bodies in bags and carried them to their designated places). Frequently they were even present during the executions of their fellow prisoners. Considering that they were sentenced to death, it certainly was no easy experience for them. For example, Ernst Boepple, deputy secretary of state in the General Government, witnessed the execution of Władysław Gurgacz, the chaplain of the Polish Underground Independence Army and two soldiers of that formation.[97]

It is worth mentioning that Amon Göth, Rudolf Höss, Josef Bühler and Kurt Burgsdorf had numerous interviews with the Polish criminologist, psy-

diesen elenden Krieg. Wenn doch die Menschen aller Völker endlich vernünftig werden möchten, die ganze Christenheit betet täglich darum." ("Dear Hermann, do not worry and do not break down. After all, you are not guilty. We all became unfortunate because of this nefarious war. When will all nations finally become smarter, the whole Christian world prays for it every day." – translation into English J. L.). Hermann (in a prison file wrongly: Herman) Kirschner – sentenced to death in the Auschwitz camp, personnel trial, executed 24. 1. 1948 (AIPN Kr 425/221).

95 *Autobiografia Rudolfa Hössa, komendanta obozu oświęcimskiego*, przeł. Wiesław Grzymski, przedmowa Franciszek Ryszka (Warsaw, 1990), 182. In the Archive of the Metropolitan Curia in Kraków, in a file entitled "konwersacje 1946" a document confirming the conversion of Rudolf Höss on Catholicism has been preserved; it is signed by a priest, Władysław Lohna (who visited Höss in the Wadowice prison), the parish-priest, Czesław Krupa and a witness Karol Lenia (the verger); the document is unsigned and has no page numbering.

96 It should be said that such evaluations are formed first of all by authors undermining the scale and scope of German crimes, often also negating that the Holocaust ever happened; see, among others, Arthur R. Butz, *Der Jahrhundertbetrug* (Richmond, 1977), 163; Wilhelm Stäglich, *Der Auschwitz-Mythos: Legende oder Wirklichkeit* (Tübingen, 1979), 176, 260.

97 Dawid Golik and Filip Musiał, *Władysław Gurgacz: Jezuita wyklęty* (Kraków, 2014), 118.

chiatrist and lawyer prof. Stanisław Batawia.[98] He examined them from the vantage point of their mental health, characteristic features, and motivation regarding their acts.[99] Unfortunately, only the psychological analysis of Rudolf Höss is available in the form of a publication. Upon Höss being sentenced to death, lawyers, especially prosecutors in the Auschwitz Trial, wanted to postpone his execution because he could have been a useful witness in other trials. However, his sentence was carried out on the appointed day (16 April 1947), because social expectations were volatile in this regard, and the authorities insisted on a "quick success".[100] At the request of the former prisoners of the Auschwitz camp, Höss was hanged in the camp.[101] The sentences (death by hanging) handed down to the twenty-one staff members in the Auschwitz trial were carried out in the Montelupich prison in Kraków in January 1948. Josef Bühler was hanged in the same prison on 22 August 1948.

Summary

The most spectacular war criminal trials in Poland took place in 1944-1947. During those trials, sentences were delivered first of all to staff members of the German occupation administration and concentration camps operating on Polish soil. Despite the pressure of the communist authorities, who tried to exploit the trials for propaganda purposes and win greater social acceptance by focusing attention on anti-German sentiments, the trials of the most important criminals were conducted in a calm and professional atmosphere.

98 Stanisław Batawia, 'Rudolf Höss, komendant obozu koncentracyjnego w Oświęcimiu', *Biuletyn Głównej Komisji Badania Zbrodni Hitlerowskich w Polsce*, 7 (1951), 9-58; see more: Joanna Lubecka, 'Unde malum? Badania psychologiczne zbrodniarzy niemieckich po 1945 r.', *Zeszyty Historyczne WiN-u*, 37 (2013), 5-21.

99 Similar examinations were conducted by Americans, mainly by Gustav M. Gilbert and Leon Goldensohn (during the Nuremberg Trials, and Gilbert also during the Dachau trial). During the Eichmann trial, he was also examined by Israeli psychiatrist Istvan S. Kulcsar; for more details see: Lubecka, 'Zrozumieć nazistę: Wątki racjonalizacji i zrozumienia zachowania zbrodniarzy nazistowskich w powojennych procesach i badaniach psychologicznych', in Patryk Pleskot (ed), *Wina i Kara: Społeczeństwa wobec rozliczeń zbrodni popełnionych przez reżimy totalitarne w latach 1939-1956* (Warsaw, 2015), 129-50.

100 AIPN Kr 1/1381, 'To był rzetelny proces, rozmowa z Janem Brandysem', *Tarnowski Magazyn Informacyjny*, 4/255 (January 27, 1985), 27; see also: Marcin Witkowski, 'Rudolf Höss w wadowickim więzieniu: Ostatnie dni byłego komendanta Auschwitz', *Wadoviana: Przegląd historyczno-kulturalny*, 18 (2015), 128-49.

101 Gumkowski and Kułakowski, *Zbrodniarze hitlerowscy*, 173.

Thus the authorities did not have the opportunity to make political capital out of the trials, at least not to the degree hoped for, as, for the most part, the pre-war jurists recruited for the purpose proved insufficiently malleable. The majority of judges, prosecutors and attorneys discharged their duties as befitted their calling. They had to prepare and navigate precedent-setting trials which involved having to devise exceptional procedures and legal structures to judge collective crimes and crimes not committed directly physically, but by orders issued remotely. In some cases, the examples set by British and American jurists were followed, but most of the solutions were based on Polish law and penal procedures. It should be emphasized that social expectations regarding punishment of German criminals were to a certain extent convergent with the plans of the communist authorities, though the latter were no doubt thwarted in any attempts to rig the trials and exploit them for their own propaganda purposes.

We can say relatively less about the prison conditions in which defendants were kept. Although prison documentation was often preserved, it was censored and it can be presumed that it is incomplete. It cannot be safely said that the Germans brought to stand trial were not beaten or tortured mentally or physically in prison. On the evidence preserved from the Montelupich prison in Kraków, it can only be asserted that they were kept safe from Polish prisoners from whom they were separated in single cells, so only their prison guards could pose a threat to their well-being. But it is quite unthinkable to imagine that there were situations, such as did occur during trials in the West, whereby Polish investigators (prosecutors) would extract testimonies from German prisoners with the help of illegal methods.

As the Cold War hotted up, the prosecution and punishment of war criminals was significantly hindered. Poland was often denied its requests for extradition, and some of the criminals were prosecuted before West German courts.[102] Court proceedings there were not always as they should be, but the Polish side could do nothing about that. After the collapse of the Soviet bloc, and as a result of better cooperation with German institutions and judiciary, fresh possibilities of prosecuting war criminals emerged. But the objective of currently pending trials is more to explain specific crimes than to mete out punishment. Indeed, ever fewer criminals can be brought to justice now, if only because most of them are now dead.

102 See: Hermann Langbein, *Auschwitz before court*: *The Trial in Frankfurt am Main 1963-1965: Documentation* (Wrocław-Warszawa-Oświęcim, 2011).

Adam Dziurok

The Specific Character of Prosecuting Nazi Crimes in the Borderlands

(on the Example of the Special Criminal Court in Katowice in 1945-1946)

Upper Silesia, on the Polish-German borderland, was a difficult region in terms of dealing with German war crimes. Many regulations, often improvised for the purpose, proved excessively draconian, and judicial decisions had to take into account not only the complex issues attendant on legitimate national affiliations of defendants, but also the historical-legal autonomy of Upper Silesia.

The prosecution of German crimes on Polish territories was regulated by the Polish Committee of National Liberation (PKWN) Decree of 31 August 1944 "concerning punishment of fascist-Nazi criminals" and "traitors to the Polish Nation". This piece of legislation, known as the *August Decree* (colloquially called in Polish *Sierpniówka*), introduced the charge of "(acting) for the benefit of the (enemy) occupier's regime" which was understood to cover murder, the abuse and repression of civilians and POWs, and, to be sure, any other forms of ill-treatment devised by that regime. A separate kind of court was created specifically for trying "fascist-Nazi criminals" – which existed until November 1946.[1] The reason behind the creation of this new judicial authority was primarily that the political judiciary was connected to Sanacja, the ousted pre-war regime, and, therefore, in line with the nostrums of the new regime, was not to be trusted by society. Courts appointed during the

1 Journal of Laws of the Republic of Poland (further: JoL) 1944/4/16; the PKWN (Polish National Liberation Committee) Decree of 31 August 1944 on penalties for fascist-Nazi criminals responsible for murder, abuse of civilians and POWs, and traitors to the Polish Nation; JoL 1944/4/21, PKWN Decree of 12 September 1944 on special criminal courts for fascist-Nazi criminals.

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war (on liberated territory) were to take preventive action – namely to stop further German crimes in those parts of Poland still under occupation. Special criminal courts shared certain characteristics with military courts. These included obligatory arrest, shortened time for judicial procedures (indictments had to be submitted within fourteen days of arrest, and hearing dates had to be set within forty-eight hours of indictment) and the lack of appeal mechanisms. There were no preliminary inquiries into cases, only investigations, with sentences issued immediately after the hearings. Sentences were final and not subject to appeal. Only those sentenced to death had the right of personal appeal for pardon to the President of the Home National Council (KRN). Additionally, an unprecedented and exceptionally severe sanction was the confiscation of property of those found guilty. Courts consisted of one professional judge and two jurors. The participation of the 'civic factor' (jurors were called "representatives of the people") was supposed to be proof of the 'democratization' of the judiciary. By design, this special judiciary was focused on the fast and rough dispensation of justice, which in some way mirrored the principles the Nazi criminals who were wont to subscribe to themselves before the tables were turned. Now, they were in the dock supposedly being tried by the Polish Nation.[2]

The PKWN Decree of 12 September 1944 established Special Criminal Courts (SSKs – *Specjalne Sądy Karne*), one for every appeal court district. In mid-February 1945, a fortnight or so after the Red Army entered Katowice, a Special Criminal Court was established in the city. It was the fourth court of its type in Poland (the first three were in Warsaw – temporarily based in Siedlce; Kraków – based in Rzeszów; and Lublin). In the end, nine such courts were established altogether. The Katowice court differed from the others in the number of its subordinate local branches – in Bytom, Cieszyn, Racibórz, and Sosnowiec.[3]

The rulings delivered by the Special Criminal Court in Katowice were influenced by the fact that its jurisdiction covered three areas constituting a mixed ethnic bag of inhabitants. First, there was Opole Silesia, i.e. that part of Upper Silesia that belonged to Germany before the war and whose inhabitants were Germans, Poles, and 'autochtons' referring to themselves simply as Silesians; second, pre-war Silesia, which belonged to Poland and consisted of parts of Upper Silesia and Cieszyn Silesia – lands of the former Prussian Partition; third, Dąbrowa Basin – which was part of the Kielce region with a nationally conscious and committed Polish population. These lands, except

2 Adam Dziurok, *Śląskie rozrachunki: Władze komunistyczne a byli członkowie organizacji nazistowskich na Górnym Śląsku w latach 1945-1956* (Warsaw, 2000), 145-6, 168-9.

3 Ibid., 171.

for Opole Silesia, were incorporated into the Reich in 1939. The German ethnic list (*Volksliste*) was introduced in these areas. In Upper Silesia, registration was compulsory and covered 90% of the population. These people were classified as constituent members of the German nation,[4] but recognized by the German authorities as 'Polonised'. In Dąbrowa Basin, where the population was more evidently Polish, the attitude of the new German authorities was different.

The Special Criminal Court in Katowice presiding over this diverse area (by November 1946) examined 1,665 cases, of which seven hundred and seventy (46%) ended in acquittals, eight hundred and thirty-eight in prison sentences and fifty-seven in death sentences (over 3%). In 1945 alone, the Special Criminal Court in Katowice sentenced thirty-eight people to death.[5] To be sure, the Katowice court was not the most severe – the Special Criminal Court in Gdańsk sentenced sixty-nine out of three hundred defendants to death.[6]

An analysis of the five hundred and twenty-seven cases tried by the Special Criminal Court of Katowice (not counting those tried by its outlying local branches), four main categories of charges (which constituted 90% of all kinds of crimes examined by this court) can be extracted:

1. affiliation to the SA – three hundred and twenty-three persons, namely 61% of all cases;
2. providing information to the German authorities – eighty-five cases (16%);
3. abuse of civilians or POWs – thirty-nine cases (7%);
4. affiliation with the SS – twenty-eight cases (5%).[7]

The defendants usually tended to be 'relatively unimportant', as most of the criminals that committed the worst and most numerous crimes either escaped or managed to hide out of fear of severe punishment. According to press reports, "small-time criminals, various confused or stupefied individuals" who had betrayed their homeland by serving the German occupier

4 See Ryszard Kaczmarek, *Górny Śląsk podczas II wojny światowej: Między utopią niemieckiej wspólnoty narodowej a rzeczywistością okupacji na terenach wcielonych do Trzeciej Rzeszy* (Katowice, 2006).

5 Adam Dziurok, 'Działalność Specjalnego Sądu Karnego w Katowicach w latach 1945-1946 w świetle prasy', *Studia i materiały z dziejów Śląska,* 25 (2001), 174.

6 Dariusz Burczyk, 'Specjalny Sąd Karny w Gdańsku (1945-1946)', *Przyczynek do monografii, Przegląd Archiwalny Instytutu Pamięci Narodowej*, 7 (2014), 289-312, 304, 308.

7 Other categories put on trial included members of the NSDAP (seven persons), Gestapo informers (5 persons), so-called Freikorpists (three persons). Some people faced several charges; these were not included in the statistics relating to four major crime categories (they were included in other groups of charges).

were the most common. Journalists mockingly wrote that there were no individuals among these defendants who stood their ground with dignity and could be described as acting "due to wrong, but ideological motives".[8] A profile of the average Silesian criminal was created by one of the prosecutors of the Special Criminal Court in Katowice; according to him, it was often a hard-working Polish miner or steelworker with a large family, claiming to have joined the SA under the pressure of his superior and against his own will ('could not avoid joining without the danger of severe persecution'), and his activity in the organisation was limited to paying subs.[9]

As indicated above, the following charges applied to over half of the defendants before the Special Criminal Court of Upper Silesia: "cooperating with the German occupation regime … operating to the detriment of the Polish State and civilians by taking part, as a member of the Nazi-fascist S.A., in a criminal association aiming at committing the crimes enumerated in the decree of 31.08.1944." From 1945-1946, merely the formal affiliation to the SA should have carried a three year prison sentence or more at the Special Criminal Court in Katowice. However, Silesian courts were extraordinarily lenient in imposing these penalties, arguing that these crimes were committed due to an "excusable lack of knowledge of the illegality of the act". After mid-1946, only proven active members of the SA were sentenced.[10]

Most judges took note of the special ethnic character of Upper Silesia and took into account that the conditions there differed from those in other parts of the country. The Court concluded that in what formerly constituted the Silesian and Pomeranian regions, under the "forcible and effective" duress of the authorities, people joined the SA *en masse*, mainly in an effort "to protect their property, jobs, and freedom, or to improve their living conditions". Furthermore, the inhabitants of these regions did not typically perceive joining the SA or NSDAP as "a great offence from the point of view of state or nation." Thus, judges took the view that one should always bear in mind the territory where the members of SA, SS or NSDAP were put on trial because the situation was different in Silesia and Pomerania, as opposed to other lands incorporated into the Reich (where there was less pressure during recruitment to Nazi organizations), and completely different to what obtained

8 'Bilans działalności Sądów Specjalnych w woj. śląsko-dąbrowskim', *Dziennik Zachodni,* 344 (1946).

9 Juliusz Niekrasz, 'Odniemczenie Śląska po drugiej wojnie światowej', *Strażnica Zachodnia*, 10-12 (1947), 314-5.

10 Adam Dziurok, 'Die Abrechnung mit deutschen Kriegsverbrechen in Oberschlesien am Beispiel der Strafprozesse ehemaliger SA-Angehöriger', in Adam Dziurok, Piotr Madajczyk, and Sebastian Rosenbaum (eds), *Die Haltung der kommunistischen Behörden gegenüber der deutschen Bevölkerung in Polen in den Jahren 1945 bis 1989* (Gleiwitz-Oppeln, 2015), 56-66.

in the General Government (where prior to accepting applicants, careful selection took place and only trusted applicants were accepted).[11] The Criminal Court took into consideration the fact that Silesians, "as a result of their specific living conditions, have a vaguer sense of their national identity than people in other districts". The "general ambiance" of Silesia was treated as a mitigating circumstance, which, due to its vague sense of societal identity, accepted membership of the SA all the more readily.

The question of "vague national awareness" (i.e. the indeterminate national identity of many Upper Silesians) is connected to the argument that defendants were not aware of "the illegality of their acts". It has been argued that they lacked the necessary degree of "national consciousness" that would make it obvious to them that such actions constituted acts of treason against the nation. In many court rulings, this was accepted as a credible explanation for formal affiliation with Nazi organizations. When the court concluded that the defendant, in joining a Nazi organization, did not realise that it was a criminal organization on which "the Nazi system was based", extraordinary mitigating circumstances were recognized. In one case, the court concluded that the defendant operated in the "partially understandable ignorance of his actions", as he was not aware that Polish citizens, even nationally neutral ones, were forbidden to belong to any organization hostile to the Polish nation. Another defendant was exonerated by the fact that he was a simple labourer uninitiated into the arcana of German policy. He had no knowledge of the SA's criminal nature since, as a musician in the SA's orchestra, he was released from the duty to participate in the formation's exercises and other activities.[12] However, in many situations, we also come across different interpretations – e.g. one judge who ruled that SA members could not claim to be unaware of what they were in for because SA activities, in his opinion, were generally known, especially in Silesia, "where each family had friends or relatives in the Reich, and where awareness of SA goals had to exist and was much greater than in central Poland".[13] Different judges also asserted that at the turn of 1941/1942, even children and the mentally challenged were aware of the criminal goals of this organization.[14]

In considering responsibility for SA affiliations, the Special Criminal Court of Katowice applied different standards depending on the defendant's area of operations. It was admitted that though affiliation to the SA "on Polish territory" always constituted treason against Poland (specifically in

11 Archive of the Institute of National Remembrance in Katowice [further: AIPN Ka], *Specjalny Sąd Karny w Katowicach*, 559/166, 30.
12 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/539, 32.
13 Dziurok, *Śląskie rozrachunki*, 201.
14 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/541, 49.

that part of Upper Silesia that had been part of Poland before the war, and in Dąbrowa Basin), it did not constitute treason against the nation in the case of German citizens. In so-called German Silesia (Opole Silesia), the principles applied to SA members were initially unbending. They were, for example, applied to members of "Stahlhelm", an ex-servicemen's organization who, in 1935, were automatically conscripted into the ranks of the SA. In this way, "the inhabitants of Opole – Poles, often even pro-Polish activists, who in this way became members of the SA, were treated as war criminals". In these complicated situations, courts tended to be quite lenient.[15] Defendants from Opole Silesia – erstwhile citizens of the Reich – could count on the understanding of the courts that, as for instance in the cases of SA members from Zabrze, "defendants played out their parts as German citizens, trying to support, albeit in this criminal manner, their own (Polish) nation".[16] SA members from Dąbrowa Basin, on the other hand, were punished most severely. There, joining this organization was considered to be a "great crime".[17] Thus, there was a direct correlation – the greater the proportion of Poles in the given area (which was equated with the degree of national consciousness), the greater the guilt of the defendant. Courts treated affiliation to Nazi organizations one way in towns where the "rotten atmosphere of Nazism" exerted influence on less aware individuals (e. g. in Bielsko, Chorzów and Pszów), and less leniently in places where "Polishness" was strong and deep-rooted (for instance, in the "purely Polish and highly national" village near Pszczyna where only 2 out of 800 inhabitants were members of the SA).[18]

The Issue of Defendants' Nationality / National Affiliation

In the examination of criminal cases of people from the Polish-German borderlands, courts faced the difficult task of determining the nationality of the defendants. These decisions had a significant impact on the judicature.

The situation was even more complicated if the evidentiary documentation was incomplete or questionable. This was the case with an inhabitant of Katowice county when the Special Criminal Court of Katowice stated that it could not tell who the defendant was – a Reichsdeutscher, member of the third group on the *Volksliste*, or a Pole who had not been accepted for registration on the *Volksliste*. The first point of indictment accused him

15 Niekrasz, 'Odniemczenie Śląska po drugiej wojnie światowej', 315.
16 Dziurok, *Śląskie rozrachunki,* 192.
17 'Bilans działalności Sądów Specjalnych w woj. śląsko-dąbrowskim', *Dziennik Zachodni*, 344 (December 14, 1946).
18 Dziurok, *Śląskie rozrachunki*, 199-200.

of declaring in the questionnaire of the Pharmaceutical Society that he was "of German blood". The court concluded that the local population in Upper Silesia, and, indeed, even in the General Government, often provided incorrect data regarding nationality to different German institutions in order to save their property. It was even easier for the defendant, as he had a German-sounding surname: Reinholz. As a result, he had saved his entire business. The court concluded that applications for "Volksdeutschen" status were common in Silesia, obtained by means of coercion, and, hence, did not constitute a denial of Polish nationality.[19] In another case, that of an NSDAP member from Rybnik, the court treated the fact that the defendant always considered himself German and lived the life of a German as a mitigating circumstance. The incriminating factor in the opinion of the court was that before the war the defendant had been a Polish citizen and was thus obliged to at least act passively, and not in a hostile manner towards the state he was a citizen of.[20] In the case of an accused SA member from Pszczyna County, the court took into consideration that he was German (before the war he belonged to the *Jungdeutsche Partei*), and "these crimes [namely SA membership] are much greater crimes for a Pole than for the German he considered himself to be even before the war".[21]

Prosecutors sometimes got carried away with cheap flights of absurd rhetoric. Such was the case of a prosecutor who stated that the defendant, Wilczek [whose surname translates as "little wolf"], was "fed upon the Polish soil of Upper Silesia with Polish milk", but when Poland was in danger, "he truly became a dangerous Germanic wolf […] attacking Poland, biting and scratching the breast which had fed him."[22] At another trial, the court described the defendant as a "latent German" during the days of Polish rule, who became "entirely, overtly German" the moment the German army entered Poland.[23]

It would be easy to imagine that, in the case of the inhabitants of the pre-war Silesian Region, Germans from the highest group on the *Volksliste* would prevail among those accused of collaboration. According to the Special Criminal Court prosecutor in Katowice, however, the greatest number of defendants that came to stand before his court belonged to the third group of the *Volksliste*, and not the first or second groups.[24] Furthermore, as we

19 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/474, 78.
20 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/961, 45.
21 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/262, 2, 25.
22 Dziurok, 'Działalność Specjalnego Sądu Karnego w Katowicach w latach 1945-1946 w świetle prasy', 173.
23 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/544, 119.
24 Niekrasz, 'Odniemczenie Śląska po drugiej wojnie światowej', 312.

see in the reasoning behind one judgment, erstwhile post-First World War pro-Polish Silesian insurgents were frequently among the defendants, who "tarnished themselves by cooperating with Germany, causing greater harm to the Polish people than German SA members".[25]

As already mentioned, Third Reich citizens were treated more leniently in Upper Silesia. Though the *August Decree* was also binding in the "regained lands" (such as Opole Silesia), in the opinion of the chairman of the Special Criminal Court of Katowice, the provisions of the Decree had to be applied prudently, as those being judged were not Polish citizens and, therefore, not obliged to be loyal to the Polish state or subordinate themselves to its nostrums. For these people, the German state authorities were not an imposed alien regime, but a sovereign authority. In practice, the only criminals to be punished were those who had committed specific crimes against humanity or held higher-ranking positions in the SA or NSDAP. Judges, however, had to cope with cases like that of the NSDAP *Ortsgruppenleiter,* who was adjudged to have been a war criminal by the Special Criminal Court, but who was also recognized as Polish by the verification commission.[26]

In the acquittal of one SS member, the court took into consideration the fact that he declared himself to be a German who was "subject to expulsion from the regained lands". However, the deciding factor was the fact that he was coerced into enlisting in the SS in 1944; he served for six months (but on active service for four weeks having spent the rest of his time in hospital due to an injury incurred while playing soccer).[27] This, to some extent, depicts the importance of cases that the Special Criminal Court of Katowice had to deal with.

The liberal treatment of SS members in Opole Silesia, however, did not extend to their counterparts in Cieszyn Silesia. There, particularly in Bielsko, the court treated service in the SS more rigorously; it took into account the engagement of its members in the campaign to expel Polish people from Żywiec and the Bielsko counties.[28]

Courts clarified the prosecution of certain acts, explaining that in the practice of the prosecutors' offices and special courts, as well as in the interpretation of the Nuremberg Tribunal, participation in certain organizations that the Special Criminal Court recognized as criminal organizations was not considered an offence. The issue concerned the *Reichsluftschutzbund* (Anti-Aircraft Organization), whereas the court of Katowice concluded that

25 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/265, 22.
26 Niekrasz, 'Odniemczenie Śląska po drugiej wojnie światowej', 307.
27 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/167, 40.
28 'Bilans działalności Sądów Specjalnych w woj. śląsko-dąbrowskim', *Dziennik Zachodni*, 344 (December 14, 1946).

belonging to this organization was "neutral in terms of nationality and politics" (a charge of affiliation with this organization having been included in the original indictment). However, affiliations with the NSV (*Nationalsozialistische Volkswohlfahrt* – National Socialist Care for the Needy) or BDO (*Bund Deutscher Osten* – Association of the German East) were not subject to penalty, and could only "constitute the illustration of other crimes". The Court additionally argued that, "a BDO card shows that the definitive (total) number (of members) was 655,956, so again, affiliation to the BDO was not a rare phenomenon in Silesia."[29] The dispute with the Special Criminal Court prosecutor's office was justified to the extent that prosecutors referred to the court many questionable cases by extending the interpretation of the term "fascist-Nazi criminal".

The high number of acquittals typical for the special judiciary[30] of the Special Criminal Court of Katowice was also the result of the specific nature of the borderlands, where charges of pro-German activities were very easy to produce. There were cases of false accusations, often resulting from venal motives or personal animosities (such as in the case of the Special Criminal Court of Katowice's acquittal of a defendant who was accused by his own daughter).[31] The substantiation of one judgment made it clear that the entire case hinged on a vendetta between the witnesses and the defendant.[32] Courts dealt with cases that could not be treated as war crimes. For instance, workers accused their superiors of bullying or of being given excessive work loads. In some situations, as seen in the case of the acquittal of a mine supervisor – a *Reichsdeutscher* from Bytom – the defendant explained that beating Polish workers did not imply some form of national reprisal, but stemmed from nerves, and could not be treated as a crime of "collaboration with the German occupation regime".[33] In a similar case, where the court acquitted a defendant charged with harming Polish workers through increasing work efficiency standards, it was argued that his actions did not bear the hallmarks of a crime as defined by the *August Decree*, and were rather the result of the over-zealous and vociferous nature of the defendant. In another case, it was stated that the defendant – a person of Silesian identity, who was a department manager at a factory in Klucze (outside of Upper Silesia) and consid-

29 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/474, 79.

30 To compare the number of acquittals by the Special Criminal Court in Katowice (46%), the SSK in Gdańsk acquitted 231 people, which constituted more than 38% of the defendants (Burczyk, 'Specjalny Sąd Karny w Gdańsku' [1945-1946], 304), and the SSK in Toruń acquitted 42% of its defendants (Janina Wojciechowska, *Przestępcy hitlerowscy przed Specjalnym Sądem Karnym w Toruniu [1945-1956]* [Toruń, 1965], 23.)

31 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/477, 31.

32 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/8, 57-8.

33 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/261, 56.

ered by Polish workers to be German – was extremely exigent, ambitious and not very understanding towards some workers not used to the German work system ("to the system to which the defendant, as an inhabitant of Silesia, was accustomed to").[34]

Thus, judges openly distinguished between "fascist-Nazi crimes" and persecution or harassment in wartimes for reasons other than the desire "to collaborate with the occupier regime". There is also the interesting case of a ticket collector from Pszczyna County who confiscated food purchased by Poles from Dąbrowa Basin. While the court admitted that the accused operated for the benefit of the German occupier and insulted Poles, it ultimately acquitted the defendant, recognizing that bootlegging cases in courts were most often related to settling old scores.[35]

Analysing the substantiations of Special Criminal Court judgments in Katowice, we come across a spectrum of behaviour that did not fully correspond to the decreed charges of collaboration or treason. There was the case of an SA member who made his apartment available for meetings of young Polish resistance fighters;[36] another who was commonly considered Polish and delighted in news of German armies losing battles.[37] In many cases, the court concluded that they did not harm Poles and spoke in the Polish language. For instance, the court acquitted a defendant who had signed a declaration to join the SA under the influence of alcohol, but then never acted against Poles (moreover, he even paid contributions to help the widows of those killed by Germans).[38]

The Court of Katowice was quite lenient even with those charged with serious crimes. Of the fifty-seven death sentences that were delivered, thirty-two were executed. This is not surprising as, in at least several cases, after sentencing a defendant to death, the court would express its opinion in favour of acquittal. It also suggested, which to some extent undermined its own previous decisions, that a convict deserved commuting the capital punishment to temporary imprisonment, by grace.[39] In several cases, fif-

34 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/5, 138-40.

35 The court saw it as its obligation to submit files to initiate compulsory rehabilitation proceedings (the accused was in the third group on the *Volksliste*, so he was not subject to standard proceedings), AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/14, 1, 75.

36 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/468, 68.

37 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/540, 41.

38 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/256, 55.

39 For instance in Knurów, for the SA man convicted as one of those who participated in making arrests, the President of National Council applied the right of clemency and commuted the death sentence to 15 years in prison, AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/957, 78-9.

teen-year prison sentences were deemed to be punishments adequately fitting the crimes.[40] Rigid legal regulations did not allow the courts to hand down anything other than the death penalty; however a sense of justice led judges to apply for clemency – which was the only method of circumventing this implacable legal provision.

An interesting situation occurred during the hearing of two defendants accused of assisting in catching fugitive Soviet prisoners. The two jurors expressed a dissenting opinion to that of the judge. The judge explained that acting through fear, as was the case here, did not exempt one from criminal responsibility.[41] The jurors, being aware that this could only spell the death sentence, overruled the judge to return a verdict of not guilty. Similar cases were recorded in the Special Criminal Court in Kraków, where jurors, deeming the provisions of the *August Decree* to be excessively rigid, opted for acquittals due to the severity of the minimum statutory penalties.[42]

* * *

Although the special judiciary was intended to fight "active collaboration" (passive collaboration was understood to be registration on the *Volksliste*), it can be said that the majority of trials related to passive collaboration. For instance, cases of SA membership which did not involve criminal activities were formally acts of treachery, but treated more leniently as passive siding with the enemy.

Court practices demonstrated a significant understanding of the specific nature of Upper Silesia, which was characterized by weak national identity. The court of Katowice did not punish defendants implacably or with excessive severity, which was not in line with what was envisaged by the legislators; the latter promulgated regulations designed to dispense summary justice based on draconian penalties. Very rarely were defendants dangerous people who formally fitted the definition of "fascist-Nazi criminals". In the early post-war years, the brunt of retributive justice was aimed at cases of lesser importance, which in the conditions in Upper Silesian meant the punishment of a considerable group of SA members.

40 In Pszczyna, upon delivering its judgment, the court issued an opinion on pardoning the defendant, arguing that although he is "a degenerate" and "truly harmful and hostile to the Polish Nation", the penalty of fifteen years in prisons should correspond to the degree of his culpability. This time, the President of the Home National Council (KRN) did not agree – and refused to exercise his right of clemency, AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/13, 76, 78.

41 AIPN Ka, *Specjalny Sąd Karny w Katowicach*, 559/9, 59.

42 Adam Lityński, *O prawie i sądach początków Polski Ludowej* (Białystok, 1999), 67.

Criminal responsibility was nuanced depending on the background of the defendants. Consideration was given to the differences in the policies of the German authorities in Silesian Opole, Cieszyn Silesia, Dąbrowa Basin, and the lands of the former Prussian Partition, which made up part of the pre-war Silesian province. Taking into consideration the socio-ethnic complexities of the borderlands, the Special Criminal Court of Katowice did not settle for one rigid approach in dealing with all individual responses to the former Nazi occupier regime, but rather tried to see the actions of defendants within the wider context of national identity issues. At the same time, it recognized the snares associated with charges laid against pro-German attitudes that made for easy retributive personal score-settling in this territory. For various reasons (due to false or unconfirmed charges, lack of evidence, etc.) nearly half of the cases examined by the Special Criminal Court of Katowice ended in the acquittal of the defendants.

Hubert Seliger

Political Lawyers: The Example of Dr. jur. Alfred Seidl, Defence Attorney at the Nuremberg Trials and Bavarian Interior Minister

Endurance of a Mindset?[1]

In September 1978, one month before the Bavarian parliamentary election, the heading "Endurance of a Mindset" (*Kontinuität einer Gesinnung*) leapt in bold letters from the pages of a thin brochure promoted as "documentation" regarding the former Bavarian Interior Minister Alfred Seidl. It presented quotes from Seidl's parliamentary speeches, his dissertation, and recapitulations of various legal arguments, all for the purpose of exposing this "radical in public service." One could have dismissed the pamphlet as excessive left-wing campaign rhetoric aimed at the conservative Christian Social Union (CSU), except that the author of the brochure made one sit up and take note: the Munich lawyer and political scientist Dr. Rudolf Schöfberger (b. 1935) was a leading grandee of the Bavarian Social Democratic Party in Germany (SPD), a longtime SPD member of parliament, and in the 1970s, the president of the historically prominent human rights organization, the German League for Human Rights *(Deutsche Liga für Menschenrechte)*.

Schöfberger had long been an opponent of Seidl. In 1972, he founded the Association of Democratic Attorneys (VDJ) *(Vereinigung Demokratischer Juristen)* on the initiative of defence attorneys specializing in state security matters, which included members of the German Communist Party, as well as people who were close to the SPD. In October 1975, while still serving

1 This essay is partly based on excerpts pertaining to Alfred Seidl in Hubert Seliger's *Politische Anwälte? Die Strafverteidiger der Nürnberger Prozesse* (Baden-Baden, 2016), [Dissertation, Universität Augsburg, 2014].

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as the state secretary of the Bavarian Ministry of Justice, Seidl rejected the appointment of the law-candidate Charlotte Niess as judge in Nuremberg, who was linked to the SPD, on the tipoff that she was a member of the VDJ; he did so on the strength of the 1972 Anti-Radical Decree (*Radikalenerlass*), a ban designed to keep political extremists out of the civil service. Seidl's explanation, however, raised questions about his objectivity in the matter. Among other things, a prison letter identified as written by the lawyer Kurt Groenewold, one of the leading lawyers for members of the Red Army Faction (RAF) (*Rote Armee Fraktion*), was used to justify the anti-constitutional stance of the VDJ. According to the magazine *Der Spiegel*, Seidl failed to mention passages where Groenewold distanced himself from the VDJ on the grounds that it kept too low a "revolutionary" profile. For Schöfberger, a strident critic of the Radicals Decree, this was proof of an attack by the conservatives and an "expansion of the professional ban" to include the Social Democratic Party.[2]

Schöfberger's primary point of attack in the "documentation" was aimed at Seidl's role as a defence attorney in the Nuremberg trials. Indeed, Schöfberger emphasized that the basic right to effective legal defence included the perpetrators of the National Socialist regime:

> "No one is accusing him of this. Every defendant has the right to defence. No defence attorney should be identified with his client. The defence can, indeed, it must be one-sided, to the benefit of the defendant. However, Seidl's summing up abandons every criminological necessity and reveals through its tone a disposition that is barely distinguishable from the cynical and brutal ideological justifications that were used by the Nazi criminals."[3]

For Schöfberger, Seidl's performance in Nuremberg was evidence of the "endurance of a [National Socialist] mindset" that carried over directly into Seidl's activities as Bavarian interior minister.

Schöfberger's conflict with Seidl provides a good illustration of how the actions of lawyers can be understood as highly political. The following argument will rely on the definition developed by Otto Kirchheimer, who is

2 For more on the "Niess case", see 'Aha, der Sumpf', *Der Spiegel*, (November 24, 1975). Niess was legally represented in this case by the Munich lawyer Gerd Tersteegen, also a member of the VDJ and a specialist in professional bans. The criticisms from the press and other politicians bounced off of Seidl. Later, as Bavarian interior minister, Seidl even supposedly endorsed the surveillance of students for the purpose of imposing professional bans. See 'Schüler im Schraubstock', *Der Spiegel*, (July 31, 1978).

3 Rudolf Schöfberger, *Alfred Seidl: Die Kontinuität einer Gesinnung. Vom NS-Verteidiger zum Innenminister: Eine Dokumentation* (München, 1978), 5-6.

widely regarded as the political scientist of "political defence lawyers," and applied to Alfred Seidl, one of the central defence lawyers at the Nuremberg trials.

Otto Kirchheimer and the "Political Lawyer"

Otto Kirchheimer attempted to define "political justice" as a scholarly term in his book *Political Justice*, published in the United States in the early 1960s. Robert van Ooyen has rightly shown that the book's most significant contribution was that it challenged the "myth of apolitical law" *(Mythos vom unpolitischen Recht),* which is a stream of thought that continues to dominate German academic legal doctrine and political science up to this very day.[4] For Kirchheimer, the quintessence of a political trial is the influence that it has on the division of political power, that is, how it influences the current constellation of power from the forum provided in the courtroom. The political trial is a place of struggle over the shift of concrete political power relations: "Political justice must, without blocking the achievement of power, make power legitimate in such a way that the prospect of winning the people's acceptance of the power structure is not put in danger or, at the least, only minimally interferes (with that process)."[5] Therefore, for Kirchheimer, the legitimacy and protection of the political order is of central importance. Political justice, again, according to Kirchheimer, is "a struggle over the right order" (Otto Suhr) that relies on the tools provided by the justice system.

This understanding of politics as a struggle by the ruling powers for political legitimacy is directly reflected in Kirchheimer's definition of "political defence lawyers" (*politische Verteidiger*). For Kirchheimer, a lawyer is an independent actor standing alongside the client. At a trial, he can either "allow the individual person to withdraw behind the matter at hand, or underemphasize the matter at hand so much that it provides only a pale background." This is a creative process in which the lawyer aims to plausibly integrate the diffuse elements of a case in such a way that a favourable outcome is reached for the client. However, when approaching a trial in this particular way, it is sometimes difficult to separate the professional identification of the lawyer from the case due to a closer relationship with the client or the cause of the client. Naturally, a lawyer can always fall back on the argument

4 Robert Christian van Ooyen, 'Die dunkle Seite des Rechtsstaats: Otto Kirchheimers "Politische Justiz" zwischen Freund-Feind, Klassenjustiz und Zivilisierung', *Juristische Zeitgeschichte,* 13 (2012), 241-66 (243-7).

5 Otto Kircheimer, *Politische Justiz: Verwendung juristischer Verfahrensmöglichkeiten zu politischen Zwecken* (Hamburg, 1993), 14.

that everyone has the right to legal counsel and that the decision of right and wrong is a matter for the court (to decide), not the lawyer. […] But this only outwardly solves the lawyer's problem; if he has decided to take a case, relying on an appeal to principle might deflect some of the opposition's pressure. However, whether he places himself on the side of his client, or whether he decides to represent some defined interests, still depends on how he reconciles the demands (or – in some cases – the perspectives) of the current social order with his own personal inclinations regarding the character of a society and what this character should be. Unlike a doctor, the lawyer does not help every person who is seeking assistance, and he does not always or necessarily serve the client who pays him the most for his services."[6]

Therefore, according to Kirchheimer, a defence lawyer becomes a *political* defence lawyer when, during a trial, he makes statements about the social order of the past or the current social order, or the affiliation of certain groups to this social order, thus exceeding the client's pure interest in an effective defence, that is, not limiting the defence to a contextualization of the defendant's concrete acts, but rather, taking up the "struggle for the right order". Often, the political lawyer is politically active. In contrast, a lawyer is not a political lawyer when he operates within the given rules of a justice system, emphatically representing his client's interests to such a degree that he directs criticisms toward individual legal norms or the conduct of proceedings, but avoiding, as a practitioner of the law, any general statements about the justice system or the underlying political or social order, whether past or present.

In some cases, it is difficult to determine when a lawyer, as a practitioner of the law, crosses the line and turns into a political lawyer. Political motives do not necessarily exclude the desire for recognition, professional curiosity, and simple monetary gain. What might be in one instance a legitimate means of defence, could be construed in another situation as a profound political act. Attempting to have a judge dismissed on the apprehension of bias because he made derogatory statements regarding the defendant in the period before the trial is a standard weapon in the arsenal of the defence lawyer. However, when a lawyer attempts to have a judge dismissed solely because a judge's apparent "Jewish nose" or his supposed membership in a political party disqualifies him from passing judgment on a "national" client, then this is a profound political statement.

The media are important tools for political lawyers in bringing the central issues of a given trial beyond the tight boundaries of a courtroom. As an "insider" and bearer of information in trials that are of particular interest to the media, the lawyer often consciously interacts with the public. To be

6 Kirchheimer, *Justiz*, 363.

sure, apolitical defence lawyers also occasionally resorted to publicity stunts attracting more pronounced media coverage in order to engender more favourable attitudes towards their clients, though not infrequently the motivation was self-glorification and self-promotion. However, with political lawyers, the media also serve to disseminate political goals. Frequently, this effect is achieved indirectly through deliberate, media-effective provocations that expose the court as being biased.

Political lawyers are supported by interest and lobby groups that use their resources to strengthen the media presence of the lawyer, but also provide access to unofficial channels, for example, government offices. The political lawyer is not only an important contemporary witness to political processes, but can also become, under certain circumstances, a public historian, that is, a historical researcher working beyond the realm of academic research, when he attempts to exculpate his client by using new sources as evidence while seeking to promote his own interpretation of them.[7]

Precisely during times of unrest, such as the Weimar Republic, or the transition from the Third Reich to a democracy provided courtesy of the Allied occupation forces in Germany, when legal proceedings indirectly play a part in supporting either the previous regime or the new order, political lawyers find that a greater scope of interpretative licence is open to them. Because of their dispute with "Nuremberg" as a political symbol, many of the defence lawyers who participated in the Nuremberg trials provided, as more or less voluntary representatives of their clients, the first answers to questions regarding the actions of elites in the "Third Reich" while also attempting to justify those actions.

Example of a Radical: Alfred Seidl

More than two-hundred and sixty lawyers were present as defence attorneys at the Nuremberg trials, including simple provincial lawyers, refugees who had fled from Silesia to Bavaria, but also judges, state attorneys, and administrative attorneys who had been relieved of their duties by the various occupation authorities, as well as the heads of legal departments of corporations of accused industrialists, and finally, prominent lawyers, such as Rudolf Dix, the last democratic head of the German Bar Association. Many of these lawyers did not harbour political intentions and saw Nuremberg primarily as

7 For more on the term "public historian", see Frank Bösch and Constantin Goschler, 'Der Nationalsozialismus und die deutsche Public History', in Frank Bösch and Constantin Goschler (eds), *Public History: Öffentliche Darstellungen des Nationalsozialismus jenseits der Geschichtswissenschaft* (Frankfurt am Main-New York, 2009), 8-9.

a professional assignment, mostly to earn income during a period stamped by material want following the war. However, one group of Nuremberg defence lawyers, generally those whose careers had begun during the Third Reich, saw their task at Nuremberg as a profound political act, in some ways even a continuation of the war by other means. For this reason, the defence attorney for Karl Dönitz, the naval judge Otto Kranzbühler, could plausibly speak of "young radicals".[8]

One of these was the Munich lawyer Dr. jur. Alfred Seidl (1911-1993). Little is known of his life before 1945. In a few retrospective snippets of information pertaining to his youth, this son of a baker tried to portray himself as a man of action, emphasizing his athletic successes as a skier and amateur boxer. Like many other law students, Seidl joined the SA shortly after the Nazi seizure of power (Machtergreifung). Allegedly (at least according to sources of the East German Ministry of State Security) he was also a member of the NSDAP "Jungsturm" (the party's youth organization at that time) from 1924 to 1927. In 1937, Seidl joined the NSDAP and was occasionally active as an acting *Blockleiter*.[9] His dissertation, which focused on a specific topic in criminal law, relied heavily on the works of Roland Freisler and advocated war against "asocials and criminal elements."[10] He eluded denazification because, as a low-income earner, he qualified for the Christmas amnesty of 1947.[11] Even though Seidl later stated that he had always thought "as a soldier", his war service was limited to time spent as a clerk in a medical unit in Munich. After being admitted to the bar in 1942, he practiced law on the side, for instance, serving to a limited extent as a public defender for the special court in Munich. In sum, his record shows that he was a Nazi of negligible rank and fellow-traveller who, at the beginning of the Nuremberg trials, only possessed a limited amount of professional experience.

He trained with Fritz Sauter, a well-known Munich defence attorney, whom the American military authorities assigned as counsel for Hans Frank, the Governor-General of occupied Poland, at the main Nuremberg trial. Following the end of the war, Sauter offered Seidl the position of legal assistant

8 "We three were almost of the same age, Dr. Horn, Dr. Seidl and I […] and one might say these three youngsters, in their opinions, perhaps as we would say today, were also the most radical." Bundesarchiv Koblenz, Ton 1040 (Interview Kranzbühler).

9 Information 64320/9/78: Hinweise zur faschistischen Vorgeschichte des bayerischen Innenministers Seidl, June 18, 1978, in: Die Behörde des Bundesbeauftragten für die Stasi-Unterlagen (BStU), HA IX/11 PA 2516.

10 Alfred Seidl, *Der Beginn der Straftat* (Würzburg, 1938), 89.

11 Notice of discontinuance from April 14, 1948, in: Staatsarchiv München (StMü), Spruchkammerkarton 1508 (Seidl, Alfred), as well as a bill of indictment from December 15, 1947, and evaluation of the supervisory committee from August 1, 1946, in the same.

and sent him to Nuremberg to sign the necessary powers of attorney. Even though Seidl made no secret of his lack of any significant professional experience, Frank surprisingly requested Seidl's services as his defence lawyer. Whereas with Sauter, Frank felt he was something of a fifth wheel, Seidl seemed to be a godsend. Since Frank was himself a lawyer, and given that he could unburden himself in his diaries, Seidl's inexperience did not matter. As it turned out though, this would prove to be a significant mistake, as Frank's diaries, on which Seidl largely based his defence strategy, became the primary evidence for the prosecution.[12]

Seidl soon earned a reputation for being the most aggressive of all of the defence lawyers at the central Nuremberg trial. Even Göring was supposed to have said approvingly that if he had got to know Seidl sooner, he would have taken him as his attorney.[13] This was perhaps why Hitler's deputy, Rudolf Hess, chose Seidl as his lawyer in February 1946 after his initially assigned counsel Günter von Rohrscheid had an accident and was temporarily unable to appear in court, which gave Hess the opportunity to get rid of von Rohrscheid.[14] Seidl supposedly never knew the real reason why Hess chose him, since Hess, already at the first meeting with Seidl, refused to share information with his lawyer, and no longer participated in his own defence. One could assume actually that a silent agreement existed between Seidl and Hess, that Hess would stonewall the Nuremberg tribunal in every way possible. Seidl's defence of Hess was difficult in that he received no support from his client, and Hess's wife implacably rejected a plea of insanity. During the course of the trial, Seidl was provided (as he assumed, by the British prosecutors) a copy of the secret protocol that had been a part of the German-Soviet non-aggression pact of August 1939, thus providing him evidence of Soviet complicity in the invasion of Poland. Because there was no consensus among the other defence lawyers as to how this treaty should be handled, Seidl believed himself forced on to the offensive, having been given an opportunity to drive a wedge between the members of the "inter-Allied tribunal". However, because of its unusual provenance, the document was not admitted as evidence by the court. Nonetheless, Seidl succeeded in proving that the document was real using the testimony of several witnesses.

Seidl's closing speech in Hess's defence began with a provocation cut short after only a few sentences: "When the German army laid down its weapons in 1918 after more than four years of heroic struggle, it did so trusting in the

12 See Hauptstaatsarchiv München (HStaMü), Nachlass Seidl, Zeitzeugeninterview Seidl, PR650 Nr. 1, 13.

13 HStaMü, Nachlass Seidl, Zeitzeugeninterview Seidl, PR650 Nr. 3, 7.

14 HStaMü, Nachlass Seidl, Zeitzeugeninterview Seidl, PR650 Nr. 2, S. 28ff., PR 650, Nr. 3, 1-3 and Nr. 4, 7-9.

assurance of President Wilson, an assurance which had been given again in 1918. In his speech before congress on January 8, 1918, the President of the United States of America offered in fourteen points, among other things, an open and publicly agreed-upon offer of peace …"[15] Even though the judges had repeatedly indicated that the Versailles settlement had no bearing on the issues that were standing before the court, Seidl attempted in spite of interruptions on multiple occasions to set out on a discussion of the "struggle for the revision of the 'brutal peace'", continuing on until his summing up was finally cut short. The summing up was only allowed to continue after it had been reviewed by the judges. As Seidl openly admitted forty years later, he very consciously included these provocative statements in his summing up in order to show that the Nuremberg trials were unjust because it was forbidden to bring up the Versailles peace settlement. He wanted, thereby, to expose the tribunal and show that Nuremberg was not a real court of law.[16] Members of the press and other interested observers "tore" at one another to get their hands on unedited versions of this summing up.[17] In light of his radical approach, Seidl knew that he was sure to receive the approval of the other defendants. However, not all of the defence lawyers agreed with Seidl's radical course of action. Of all people, his earlier mentor, Sauter, later distanced himself from Seidl in private correspondence with Nuremberg prosecutor Robert Kempner.[18] But it was irrelevant to Seidl, who assumed the role of the "lone fighter". He never once tried to coordinate his strategy with any of the other lawyers, precisely because some of them had warned the prosecutors about Seidl and wanted to enter into arranged plea bargains.[19]

According to Seidl, the reason that all of his clients in the subsequent Nuremberg trials wanted him to defend them was that his performance in the central trial had made him famous. However, standing now before a purely American judiciary, he could no longer place his hopes on a collapse of the proceedings. He claimed that the Soviet Union's accession to the Treaty of London, which was the legal basis for the central Nuremberg trial, had affected the Control Council Law No. 10, the legal basis for the subsequent Nuremberg trials. Since this law explicitly drew its authority from the Treaty

15 *Der Prozess gegen die Hauptkriegsverbrecher vor dem Internationalen Gerichtshof Nürnberg 14. November 1945 – 1. Oktober 1946* (Nürnberg, 1947), Bd. 17, 597-602.

16 HStaMü, Nachlass Seidl, Zeitzeugeninterview Seidl, PR650 Nr. 4, 1-6.

17 Viktor von der Lippe, *Nürnberger Tagebuchnotizen. November 1945 bis Oktober 1946* (Frankfurt am Main, 1951), 401.

18 Correspondence with Kempner, February 24, 1949, in United States Holocaust Memorial Museum, RG 71.001 Robert M. W. Kempner Collection, Folder Anwälte 1945-46.

19 HStaMü, Nachlass Seidl, Zeitzeugeninterview Seidl, PR650 Nr. 3, 13.

of London, its legal validity was equally void.[20] Seidl was to maintain his tactic of consciously making provocative statements. For example, in the "Ministries trial" *(Wilhelmstraßen-Prozess)*, Seidl began his summing up with remarks to the effect that the Versailles settlement, when compared to the occupation of Germany under the Morgenthau Plan, had been a rousing success.[21] Furthermore, Seidl resuscitated a defence argument that had been used by decidedly "German national" lawyers, such as Friedrich Grimm, in the great *Fememord* trials of the Weimar Republic, namely, that a so-called "state of emergency" provided legal immunity.[22] Seidl even used the "state of emergency" argument to exculpate the defendants in the so-called doctors trial, who were charged with criminal experiments on human beings, or, as in the case against Oswald Pohl, justifying slave labour in the concentration camps, all under the claim that the German army and the German Reich were locked in a war of life and death against the Soviet Union.[23]

Seidl also proved doggedly wayward in his lifelong struggle for the release of Rudolf Hess from Spandau, the prison for Nazi war criminals. In the 1950s and 1960s, he initiated numerous media campaigns to that effect. For example, he publicly charged France, Great Britain, Israel, and the United States with breaking the established peace because of the Suez Crisis of 1956 and the Vietnam War, pointing out that Hess had been sentenced for the same crimes.[24] Numerous publications that he had published together with the lobby organization founded by Hess' son, the "Hilfsgemeinschaft für Rudolf Hess", claimed that an allied conspiracy existed against Hess. When requested by representatives of the German government to abandon his campaign because it would only cause political damage and end with a slap in the face from the allies, Seidl responded uncompromisingly that he was an independent attorney and that he would not take orders.[25]

Very soon after the Nuremberg trials, Seidl became active as a "public historian". In 1949, he approached a well-known Munich publisher in an

20 Alfred Seidl's correspondence with the General Secretary, March 10, 1948, along with Trial Brief concerning "Crime against Humanity" [March 7, 1948], in National Archives, College Park (MD), Record Group 260: Records of the United States Occupation Headquarters WWII, Omgus, OCCWC, Administrative Records of the Defense Center 1946-1949, Witnesses and Documents, Box 173, Folder Case 11, File 3.

21 *Trials of War Criminals before the Nuremberg Military Tribunals* (subsequently referred to as TWC), Washington D.C. 1949, vol. 14, 191.

22 Friedrich Grimm, 'Staatsnotstand, Staatsnotwehr und Fememord', *Die Justiz*, 5 (1929), 329-32.

23 *TWC*, vol. 15, 188 und vol. 2, 7.

24 See copies of the various statements, in HStaMü, Nachlass Seidl, Nr. 53.

25 Norman Goda, *Kalter Krieg um Speer und Heß: Die Geschichte der Gefangenen von Spandau* (Frankfurt am Main, 1991), 284.

attempt to publish a collection of documents acquired from the files of the German foreign office pertaining to the German-Soviet secret treaty of August 23, 1939. The head of the publishing house declined the offer on the grounds that Seidl's collection was not a historical account of related events, but rather, a politically motivated attack on the legal foundations of the Nuremberg trials. The facts of the National Socialist period were still too-little known and, indeed, much of what was now known had come to light because of the Nuremberg trials.[26] The collection was later published by a publisher in the French-occupied zone, but provoked little response.

Because of his prominence due to the Nuremberg trials, Seidl became one of the most sought-after West German lawyers in prominent criminal cases of the 1950s and 1960s.[27] At the same time, after the Nuremberg trials, Seidl was without question one of the most influential figures in war crimes trials in West Germany in those years. The case against Walther Huppenkothen in the First Munich District Court in Augsburg was particularly important. Huppenkothen was one of the central Gestapo agents in countering military resistance in Germany during the war, and a prosecuting counsel for the Reich Security Main Office (*Reichssicherheitshauptamt*, RSHA). He was decisively involved in the sentences handed down to prominent resistance figures in the last days of the war, such as Admiral Wilhelm Canaris and Major-General Hans Oster. Seidl attempted to have one of the sitting judges of the district court in Augsburg removed from the panel on the grounds that he had been politically persecuted as a "Jewish *Mischling*" by the National Socialist regime.[28] Members of the German Resistance movement were candidly characterized by Seidl in his summing up at the Augsburg district court in October 1955 as traitors to the fatherland because they had passed on information regarding the invasion of Poland to Dutch diplomats prior to the invasion. Seidl dismissed sharp attacks by the press, which quite rightly accused him of creating a new stab in the back myth *(Dolchstoßlegende)*, by denouncing the press as biased. He claimed that the Western powers had declared war on the German Reich in 1939 only because of the treachery

26 Seidl's letter of September 27, 1947, and Spangenberg's response of January 30, 1948, in: Archiv des Instituts für Zeitgeschichte München (IfZ), ED 42, Nr. 2.

27 Well-known cases in which Seidl participated include the trial of the murder of the high-class prostitute Rosemarie Nitribitt (1960), the trial of the Bavarian Casino Affair (1959), the trial of the cancer specialist Dr. Josef Issels (1961), the Vera Brühne Trial (1961), and the Iller Trial in Kempten (1957), dealing with one of the most significant accidents in what was then still the new German army.

28 Seidl's motion for dismissal, September 12, 1955, and the response from the district court in Wiesenthal, September 13, 1955, in: StMü, Staatsanwaltschaften, Nr. 17452/22.

of the conspirators.[29] Along with the press, academic historians also found themselves being challenged by Seidl. In November 1955, during a seminar hosted by the Institute of Contemporary History, Dr. Helmut Krausnick refuted Seidl's arguments in his presence with such a wealth of historical material that at the end of the seminar, Seidl had to admit that he could no longer uphold his claims.[30] Seidl's change of heart did not last though. In an interview given shortly before his death, Seidl stated that Oster and Canaris had been "traitors to their country, […] much worse than one could even begin to imagine."[31]

Just as Seidl continued to view resistance to the National Socialist regime as treason, he also returned to the "state of emergency" argument in the 1957 trial of Sepp Dietrich in the First District Court in Munich for the murder of political opponents during what the Nazi construed as the "Röhm Putsch". The same was true in Munich in the early 1960s for the accused supporters of the right-wing extremist organization "South Tyrolean Liberation Committee" (*Befreiungsausschuss Südtirol*), which had carried out bomb attacks against Italian police officers. Now it was a "people's emergency" (*Volksnotstand*) against the "unjust Italian regime" that Seidl used as a means of exculpating the deeds of terrorists.[32] Apparently, however, in Seidl's worldview, no "state of emergency" existed for the state of Israel. In 1963, suspected Mossad agents carried out bomb attacks against German missile technicians in Egypt that the Egyptian military had employed for the construction of surface-to-surface missiles. Seidl travelled to Egypt as their attorney, to press for damages against Israel. According to Seidl's interpretation, these acts ranked as among the most "treacherous" outrages committed in recent criminal history.[33]

In general, Seidl showed interest in his clients' body of ideas, and he did not shy away from working together with right-wing extremist organizations either. Writing to Gerhard Frey, a leading right-wing extremist for whom Seidl secretly provided legal counsel beginning in the late 1960s, Seidl, indulging in serious legal pettifoggery, stated that six million Jews could not

29 Transcript from a radio programme of September 23, 1955, and Seidl's statement of October 13, 1955, in HstaMü, Nachlass Seidl, Nr. 10.

30 '"Ah", Wahrheit über die letzten Monate vor dem Krieg. "Institut für Zeitgeschichte" widerlegt Dolchstoßlegende von einer Schuld des deutschen Widerstandes', *Passauer Neue Presse*, (November 22, 1955).

31 HstaMü, Nachlass Seidl, Zeitzeugeninterview Seidl, PR650 Nr. 6, 6-8.

32 Judgement rendered by the BGH, dated February 26, 1965, in StMü, Staatsanwaltschaften, Nr. 30717/5.

33 Also see Deutsche Presse Agentur, 'Dr. Seidl vertritt deutsche Raketenfachleute in Ägypten. Strafverfahren wegen der Sprengstoffanschläge', *Hamburger Abendblatt* (April 24, 1963).

have been murdered, but rather there could have "only" been "4,581,200 dead at the most."[34] Following the suicide of Hess in 1987, Seidl speculated that a "Jewish organization" had murdered Hess. When Israeli Foreign Minister Abba Eban once said that Hess should remain in prison for the rest of his life, this was for Seidl sufficient evidence for his conspiracy theory.[35] However, Seidl was smart enough to avoid publicly showing solidarity with right-wing extremists. He turned down the offer of official membership of the "Hilfsgemeinschaft für Rudolf Hess" on numerous occasions, saying that, to the public, he wanted to appear merely as the organization's "legal counsel".[36]

Though Seidl successfully kept his contact with right-wing extremists out of sight until his death, he was one of the most outspoken politicians of the CSU's right wing. He began his career as a representative in the Bavarian parliament in the late 1950s, and, because of some of his unconventional ideas regarding administrative reforms, he was compared to Fidel Castro by *Der Spiegel*.[37] As a CSU politician, he fought against the Treaty on the Non-Proliferation of Nuclear Weapons from 1969 as well as the treaties associated with Ostpolitik, and thus refused to recognize the Oder-Neisse river as the western border of Poland. All of this was a question of the "self-assertion of the entire German people."[38] The highpoint of Seidl's political career came in 1977 when he was appointed interior minister of Bavaria, the largest state in West Germany. Occupying that position for little more than a year and a half, Seidl earned a reputation befitting his character. For instance, in 1978, he openly argued the case for the death penalty in the Bavarian parliament for the leftist terrorists of the Baader-Meinhof Gang, while in September 1978, he stated that the right-wing extremist organization "Wehrsportgruppe Hoffmann" did not present an "acute danger" to the legal order.[39] Seidl

34 Correspondence from Seidl to Hans Laternser, April 28, 1969, in HStaMü, Nachlass Seidl, Nr. 175.

35 HStaMü, Nachlass Seidl, Zeitzeugeninterview Seidl, PR650, Nr. 5, 6-7.

36 Correspondence from Alfred Seidl to Wolf Hess, October 16, 1990, in HStaMü, Nachlass Seidl, Nr. 132.

37 'Verwaltungsreform: In der Praxis Widerstände', *Der Spiegel*, (May 6, 1959).

38 HStaMü, Nachlass Seidl, Zeitzeugeninterview Seidl, PR650 Nr. 10, 18.

39 Not until January of 1980, and only after great hesitation from Seidl's successor in office, Gerold Tandler, who blamed the public pressure to ban the group of "half-mad wackos" abroad, was the "Wehrsportgruppe Hoffmann" prohibited. The ban, however, did not prevent a member of the organization from murdering the former president of the Jewish congregation in Nuremberg, Shlomo Lewin, and his wife. The alleged murderer committed suicide. The group's leader, Karl-Heinz Hoffmann, was later prosecuted in Nuremberg. Since it could not be proved that Hoffmann had ordered the murders, he was found not guilty on these charges, but he was convicted for several other crimes. Hoffmann owed this partial success in court to his defence

made a telling contribution to pushing through the controversial Bavarian law regarding the duties and competencies of the police forces *(Polizeiaufgabengesetz)*, which went into effect in the summer of 1978 and allowed for the use of machine guns and hand grenades in police operations. For Seidl, "the Baader-Meinhof era" meant that Bavaria had to pioneer laws governing the police. Seidl never had any issue with the controversial passages of this law.[40] Likewise, Seidl did not shy away from using the police against political opponents. Only a few months before Schöfberger's pamphlet appeared, Seidl allowed house searches to be conducted because a brochure on the new police laws also elaborately detailed Seidl's past.[41]

This move was too radical even for Seidl's party colleagues. Already during the summer, the Federal Interior Ministry had conducted secret investigations into Seidl's past associations with the Third Reich.[42] Following the Bavarian parliamentary elections of October 15, 1978, Seidl was not considered for a post in the new cabinet. The newly-elected Minister President of Bavaria, Franz Josef Strauß, had defended Seidl in late September against Schöfberger's criticism of the defence methods that Seidl had employed in the Nuremberg trials, accusing the SPD of "defaming the professional standing of lawyers in an unheard of manner".[43] Now, the press speculated, it looked as if the Seidl issue had become too much of a political hot potato.

Conclusion

During the Nuremberg trials and other, later trials in West Germany, alleged National Socialist criminals and right-wing extremists found in Seidl a defence lawyer and legal counsellor who was a willing and uncompromising sympathizer of the National Socialist past. But, to be fair, Seidl was less of a National Socialist and more of an authoritarian nationalist. Crimes that were supposedly carried out because the German state was in peril, or because

attorney, Wolfgang Benno Vetter, who had become known in 1968 as the local attorney of the extra-parliamentary opposition in Nuremberg, and who distanced himself quite clearly from his client, calling him a "neofacist". See Hans-Wolfgang Sternsdorff, 'Chef, ich habe den Vorsitzenden erschossen', in *Der Spiegel*, (November 19, 1984) and 'Nicht nur Pinsel', *Der Spiegel*, (February 4, 1980).

40 HStaMü, Nachlass Seidl, Zeitzeugeninterview Seidl, PR650 Nr. 10, 1-6.

41 Gerd Heidenreich, 'Freiheit im Freistaat: Polizeiaktion gegen Münchner Verlage – Hintergrund: die Vergangenheit des bayerischen Innenministers Alfred Seidl', *Die Zeit*, (October 20, 1978).

42 Information 64320/9/78: Hinweise zur faschistischen Vorgeschichte des bayerischen Innenministers Seidl, June 18, 1978, in BStU, HA IX/11 PA 2516.

43 Gert Heidenreich, 'Freiheit im Freistaat', *Die Zeit*, (October 20, 1978).

of existential threats from the outside, were, for Seidl, excused by a state of emergency that superseded the limits of the constitution. The Nuremberg trials gave Seidl the opportunity to claim that the Allies were imposing a "victor's peace". Still, Seidl greatly exceeded what could be expected from a competent defence attorney and, therefore, provides a perfect example of the "political lawyer" as defined by Otto Kirchheimer. For Seidl, the courtroom was a place where the "national interests" of the German people could be defended and where excessive state actions could be justified. Frequently, the concerns of clients suffered as a result. Thus, in the Munich Huppenkothen trial of 1952, the summing up was again used to initiate a conflict with the judge and the state prosecutor. When the prosecutor accused Seidl during the trial of rehashing the stab-in-the-back myth, Seidl dramatically resigned as counsel for the defence. Seidl took up his client's case again after a few days; he had been cajoled into doing so by Huppenkothen, who had been taken completely by surprise by Seidl's actions.[44] Following the detente in relations with the Soviet Union, Seidl's shrill tone was not the least reason for making it impossible to have Hess released in the spring of 1985 on humanitarian grounds.[45] Seidl's politically motivated approach to criminal defence surprisingly closely corresponded to his conduct as a right-wing conservative politician. Blind in his right eye, he used his positions as state secretary in the Bavarian Ministry of Justice and as Interior Minister to promote excessive measures to protect the state from both real and imagined left-wing opponents. In this respect, one can certainly identify the "endurance of a mindset" with Alfred Seidl.

44 'Zuchthaus für Huppenkothen beantragt: Dr. Seidl legt nach einer Kontroverse die Verteidigung nieder', *Frankfurter Allgemeine Zeitung*, (October 29, 1952).

45 Goda, *Kalter Krieg*, 309-10.

Nikita Petrov

Judicial and Extra-Judicial Punishment and Acts of Retribution against German Prisoners of War, 1941-1945

The initial phase of the Soviet-German war may be justifiably described as mortal combat between two brutal dictatorships. The rapid success of the German offensive left the Stalinist regime reeling on the brink of annihilation. In this context, the question arises as to what extent the issue of German prisoners of war (POWs) exercised the attention of the Soviet leadership at this difficult time? Was a solution found, and if so, what was it? Today, no secret is made of the fact that the laws and customs of war, in particular with regard to POWs, were violated by both parties. This question has been the subject of much research, but while Russian literature generally documents at length the facts of the cruel treatment by Germans of Soviet POWs, information on similar Soviet atrocities, in contrast, are suppressed. But bringing this hitherto hidden truth out into the open seems necessary.

The tragic fate of the first German prisoners of war is attested by the fact that "up to 95% of soldiers and officers of the Wehrmacht who were captured in 1941-42 were killed by Red Army soldiers or died from the arbitrary actions of the Soviet authorities somewhat later."[1] But what lies behind the term "arbitrary actions of the Soviet authorities"? There are numerous accounts of executions of German POWs carried out by Red Army soldiers. The Russian historian Anatoly Yakushevsky has cited numerous examples of the "liquidation" of prisoners of war captured by the Red Army during 1941-43,[2] but it remains unclear to this day how many German prisoners of war

1 Alfed de Zayas, *Die Wehrmacht-Untersuchungsstelle: Deutsche Ermittlungen über alliierte Völkerrechtsverletzungen im Zweiten Weltkrieg* (München, 1980), 277. Cited in: Viktor Konasov, *Sud'by nemetskikh voennoplennykh v SSSR* (Vologda, 1996), 9-10.

2 Anatolii Yakushevskii, *Rasstrel na klevernom pole*, (June 21, 1993). See also his publication in the journal *Novoe Vremya*, 25 (1993), 40-2 and in the book: Konasov, *Sud'by nemetskikh voennoplennykh v SSSR*, 25-6.

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died in this way. One can only assume that the figure is large. Nevertheless, the contribution of these summary executions hardly rivals that of Soviet state terror itself. Here it is important to understand where the "unsanctioned random actions" at the Front ended and the deliberate, widespread terror sanctioned from above began. It is a commonly held view that only from May 1943 was any differentiation made of prisoners based on their potential danger.[3] It is difficult to accept this view. Most likely, this practice, which reached its zenith with the shooting in 1940 of captured Polish officers ("the Katyn Massacre"), was to determine policy in respect of German prisoners of war. It is indeed the case that Germans, when taken prisoner, disappeared en route to their designated POW camps. We can assume that only the most obedient and docile prisoners reached these camps. Those considered, by reference to their conduct in captivity or by occupation (e.g. service in the SS), to be "heinous enemies", were incarcerated in prisons belonging to the special sections of the territorial directorates of the NKGB-NKVD.

Official Soviet statistics show that on August 10, 1941, some 1,990 men (of whom 1,016 were Romanians and 974 Germans) found themselves in Soviet POW camps in the rear, and that from 22 June to 31 December 1941 such camps received a mere 9,147 POWs.[4] This number seems to be surprisingly small.

It is impossible to imagine that during the second half of 1941, in this vast theatre of war, only 9,147 enemy effectives engaged in combat with Soviet forces were taken prisoner. The natural conclusion one might draw is that in addition to those Germans killed without being taken prisoner, there were other categories of prisoners whose cases were transferred for investigation to Military Counterintelligence units (Special sections of the NKVD) or local State Security and Internal Affairs branches. Here, prisoners were not kept in POW camps (and, thus, their numbers were not counted), but in prisons closest to city outskirts. But even then, German POWS could easily be shot without trial if there was a danger that they would be liberated by the advancing Wehrmacht. This approach lay within the rules of the Soviet penal system so well known to Soviet citizens themselves; prisoners whom the authorities had not managed to evacuate deep into the Soviet Union in the event of a hasty retreat were simply executed by the NKVD and the People's Commissariat for State Security (further referred to as *NKGB*).[5]

3 Konasov, *Sud'by nemetskikh voennoplennykh v SSSR*, 58.

4 Vladimir P. Galitskii: 'Vrazheskie voennoplennye v SSSR (1941-1945)', *Voennoe-istoricheskii zhurnal*, 9 (1990), 39-46, 39-40.

5 For more details of massacres in the course of the evacuation of prisoners from the western regions of the USSR in the years 1941-42, see the work of Aleksandr Gur'yanov and Aleksandr Kokurin in the journal *Karta*, 12 (1994), 137-8.

There is no shortage of examples, as in 1941-1942, of German POWs being transferred directly from Military Counterintelligence (*UOO*) to internal prisons of territorial frontline directorates of the NKVD. So in July 1941, the first German pilots shot down near Leningrad were held in an internal NKVD prison of the Leningrad region. Those Germans who fell into the hands of Military Counterintelligence became subject to investigation and could be sentenced in full compliance with the Criminal Code of the Russian Soviet Federal Socialist Republic (RSFSR). However, most frequently during this period, German POWs were executed without trial, merely by verdicts of the Special Sections of the Fronts.

So, at the end of 1942, in accordance with the decrees of the Special Section of the NKVD Western Front, two German pilots who had been taken prisoner – Georg Schinagel (born in 1915) and Martin Justel (born in 1922) – were executed. The former was executed on November 14, 1942, the latter on December 19, 1942. In both cases, instead of formal sentencing there was merely a hand-written top secret decree:

"Approved"
December 18, 1942
Deputy Chief
Special Section NKVD Western Front,
Major of State Security
(Shilin)

Decree

Operational Field Army, December 18, I, Deputy Chief of the 6th Department of the Special Section (*OO*)[6] NKVD of the Western Front, Captain of State Security, Gordon, having considered the materials regarding the German POW, fighter pilot, Lieutenant Martin Justel, born in 1922, native of the town of Osterode (East Prussia)

Find:

Justel was a member of the Hitler Youth, he volunteered to enlist in the Germany Army in 1939 and actively participated in the actions of the German occupation forces in France and other countries, actions for which he was awarded the "Iron Cross" 2nd class. He refused to provide information on equipment and units of the German Army, pleading ignorance.

6 OO – Osobyi Otdel – Special Section.

On the basis of the above

I decree that:

Martin Justel as an implacable enemy of the USSR IS TO BE EXECUTED

Deputy Chief of the 6th Department of the Special Section OO NKVD Captain of State Security. / Signature / (Gordon)

Agreed: Chief of the 6th department of the Special Section OO NKVD ZF Captain of State Security. / Signature / (Zaitsev)

December 18, 1942.[7]

There follows the handwritten Declaration:

"Operational Field Army December 19, 1942
We, the undersigned, Comrade Junior Lieutenant of State Security Ostreiko and Junior Lieutenant of State Security Samusev affirm that on this date at 02:00 in the morning, pursuant to the decision of NKVD ZF we executed POW Martin Justel.
We hereby sign /signatures/ Samusev, Ostreiko."[8]

Similar documents were drawn up for the pilot-observer Staff Sergeant Schinagel. In the order to execute him it was said: "He refused to provide information on the unit in which he served, or about other units of the German Army known to him, claiming that he did not possess such information."[9]

There is no need to add that such executions contravened not only the accepted norms and rules for the treatment of POWs, but also even the internal rules of operation of Soviet State Security. During the war, the right to extra-judicial reviews of cases was held solely by the Special Council (OSO) of the NKVD, but certainly not by the separate structural subdivisions of the NKVD. When in 1943, the Head of the 1st Special Department (accounting archive) of the NKVD Arkady Gertsovsky received these papers, he forwarded them to the archive, with the following adnotation:

"In returning the decrees of the Special Section of the NKVD Western Front regarding German POWs Georg Schinagel and Martin Justel, we consider it necessary to deposit documents of this kind, if they are to be kept for on-going work purposes of the Special Sections, in the Special Archive. There is no need to make a note of these persons in the Operational Reference File *(OSK)*."[10]

7 *Tsentralnyi Arkhiv Federal'noi Sluzhby Bezopasnosti RF (hereinafter TsA FSB)* F. 7. op. 1. D. 137.
8 Ibid.
9 Ibid.
10 Ibid.

Gertsovsky's remark should be understood as signifying that these materials had to be deemed top secret and should not be known to a wider circle, even to all NKVD members; thus they should be kept in the "Special Archive". And, of course, no reference to those executed in accordance with the decisions of the Special Sections of Front Operations should ever be released, which is why their names were not to figure in the files. It is most likely that even to this day, German soldiers who were summarily executed in this manner are still registered as missing in their homeland. It proved possible to uncover the statistics for such decisions of the Special Sections, but only for the year 1942. Such judicial statistics state that for 1942 "600 people were subjected to" the decisions of the Special Sections.[11] What is important here is the fact that it was such a number – 600 people were sentenced without trial, merely according to decisions issued by Directorates of Special Sections of Front Operations of the Red Army. It is hard to say who these people were. One can only assume that many of them were POWs. And, certainly, such executions took place not only in 1942 but also in both preceeding and subsequent years.

It should be noted that the executions of prisoners on the basis of summary *in absentia* rulings by Directorates of Special Sections were not legitimate in the eyes of the leadership of the NKVD. This practice was not part of any regulatory framework even in Stalin's judicial system. Official recognition by the NKVD OSO was quite another matter. This body, which had the power to scrutinise outcomes of investigations, issue rulings on punishments and pronounce sentences *in absentia*, was, at the beginning of the war, the only organ with the power to order extra-judicial executions.

Special Council (OSO) of the NKVD

The practice of examining cases *in absentia* was nothing new or out of the ordinary for the Soviet legal system; to be precise, it did not go beyond the traditions already established in Russia even before October 1917. In Tsarist Russia, a Special Council was created in the Interior Ministry to consider cases of individuals conducting anti-state revolutionary activities. Such a mechanism of repression was envisaged in situations where insufficient evidence prevented such cases being brought before a jury in ordinary courts. However, the powers enjoyed by the Special Council in the twilight years of

11 *TsA FSB, F 8 (fond statistiki)*. D. 156. Also in the book: Oleg Mozokhin, *Pravo na repressii* (Moscow, 2011), 489 – the listed number of those sentenced by OO NKVD decisions is 439.

Imperial Russia, in the early twentieth century, were modest – the maximum punishment that it could give was three years' exile under police surveillance. It was a far different matter after the Bolsheviks came to power. The practice of *in absentia* reviews of investigations was not only firmly endorsed by the new government, but generally came to represent the norm and principle of penal policy. Mass repression and wide-ranging oppression would have been impossible on the large scale desired by communist authorities without speedy and simplified procedures to determine sentences in such cases, not to mention, without any failures and legal "complications". Over the many decades of the USSR's existence, penal policy may have had periods of severity or thaw, but its illegal character always remained the same and unchanged. Even many years after Stalin, when it seemed that the practice of extra-judicial repression had been abolished and condemned, this policy in one form or another continued.[12]

The extra-judicial legal policy conducted by the Bolsheviks was punitive and one of extreme cruelty. The executive committee of the Cheka had the right to conduct non-judicial reviews of those cases concurrently under investigation by the commission itself. Here, the maximum possible punishment was the death sentence. It turned out that the Cheka combined the detective (operational), investigative and judicial functions at one and the same time. Until 1934, the executive committee of the Cheka-OGPU[13] had powers of extra-judicial execution, right up to carrying out such summary executions. Furthermore, with a view to the denunciation and isolation of undesirable elements, in 1924 a Special Council was attached to the Executive Committee of the OGPU with the right to sentence to terms of imprisonment in concentration camps or up to 3 years exile and banishment. In 1934, with the abolition of the OGPU and the formation of the NKVD, the Special Council (OSO) extended its right of punishment – up to five years' exile, banishment or hard labour camps. In 1937, the Politburo of the Communist Parrty granted the NKVD Special Council the right to imprison people for up to eight years, and in some cases, on charges of spying for Poland, for up to ten years. Shortly after the outbreak of war, on the basis of the decision of GOKO[14] No. 303ss of November 17, 1941, the NKVD OSO

12 In 1961, after the Decree of the Presidium of the Supreme Soviet of the RSFSR on the fight against persons evading socially useful work, it was decided on the basis of the decisions of the executive committees of local councils (not judicial bodies!) that citizens could be deported to remote areas and be forcibly made to work. Also without the decision of a judicial authority, academician Andrei Sakharov was exiled to Gorky in January 1980. Numerous similar examples can be cited.

13 OGPU – Obedinennoe gosudarstvennoe politichesloe upravlenie – Joint State Political Office.

14 GOKO – Gosudarstvennyi komitet oborony – State Defense Committee.

received the right to pronounce the death penalty. The NKVD OSO and, subsequently, the MGB Special Council, retained this prerogative until Stalin's death. It is true, however, that, as of 1946, there are no known cases in which the Ministry of Interior (MVD) or Ministrty of State Security (MGB) Special Councils (OSOs) sought to take advantage of this right, but at the same time, sentences of up to twenty-five years in the camps were common.[15]

The principles upon which cases were transferred for examination on an extra-judicial basis were set out in NKVD Order No. 00762 of November 26, 1938: "Case to be sent to the Special Council of the NKVD with the prosecutor's final ruling in cases where there are circumstances preventing the transfer of the conduct of the case to court (risk of revealing the identity of a valuable agent, the inability to use in court evidence implicating the guilt of the arrested person when the prisoner's guilt is beyond doubt, and so on)."[16]

This phrase "guilt beyond doubt" – guilt which, however, could not be proven in court – contained the quintessential element of Soviet law, when a person's guilt was actually not determined by a court, but determined before the defendant's trial, on the basis of the criterion of the "harmfulness or usefulness" of this person to the Soviet regime – as was clearly expressed in the early 1920s by one of the first members of the Cheka, Martyn Ivanovich Latsis, a staunch advocate of Red terror.

In April 1943, responsibility for state security was transferred from the NKVD to the newly formed *NKGB*. Vsevolod Merkulov was appointed People's Commissar of State Security, and at the same time, on April 19, 1943, Military Counterintelligence responsibilities were transferred from the NKVD's Special Sections to the People's Commissariat of Defence and to the People's Commissariat of the Navy which, with the GUKR[17] SMERSH NKO[18] and UKR[19] SMERSH NKVMF,[20] were formed in its stead. Investigations conducted in these departments (NKGB and SMERSH) might also be considered extra-judicial. They were sent to the NKVD Special Council. Matters continued thus until 1946, when a Special Council was organized within the framework of the Ministry of State Security (MGB). By MGB

15 *Normativnye dokumenty reglamentirovavshie raboru OSO NKVD-MGB-MVD,* see: Evgeni Zaytsev (ed), *Sbornik zakonodatel'nykh i normativnykh aktov o repressiyakh i reabilitatsii zhertv politicheskikh repressii* (Moscow, 1993), 61-83.

16 Order published with redactions: *Organy gosudarstvennoj bezopasnosti SSSR v Velikoj Otechestvennoi voine* vol. 1, book 1 (Moscow, 1995), 16-20.

17 GUKR – Glavnoe upravlenie kontrrazvedki – General Directorate of counterintelligence.

18 NKO – Narodnyi komissariat oborony – People's Commissariat of Defence.

19 UKR – Upravlenie kontrrazvedki – Directorate of counterintelligence.

20 NKVMF – Narodnyi komissariat voenno-morskogo flota – People's Commissariat of the Navy.

Order No. 00496 of November 2, 1946, the composition of the MGB OSO staff was announced.

Prior to 1950, the Special Councils (OSOs) in the Ministry of Internal Affairs (MVD) and the State Security Ministry (MGB) worked in parallel, examining cases in their respective departments. It was nonetheless obvious that the centre of gravity of all extra-judicial penal functions had ineluctably been transferred to the MGB OSO. All that was left for the MVD OSO was to examine cases regarding special settlers and those who were exiled, issues of early release from prison camps and, finally, adjudicating on the odd few cases occurring within the MVD itself.

In June 1950, in connection with the transfer of all work on special settlers and those moved from the MVD to the Ministry of State Security, the Special Council of the Ministry of Internal Affairs was abolished. Meetings of the MGB OSO were attended by Deputy Ministers of State Security (GB). They, in the presence of the prosecutor dealing with the given case, would take the ultimate decisions and would sign the protocols in affirmation. An extract from the minutes of the OSO was deemed to have the validity of a court judgment and would be presented as such to the prisoner. Regular reports on meetings held by the MGB OSO and on the number of cases handled were sent to Stalin by the MGB. Until his death, Stalin invariably interested himself in such matters and received reports on the work of the Special Council. The last report addressed to him was sent by State Security Minister Ignat'ev on March 4, 1953.

The Special Council (OSO) was abolished by Decree of the Presidium of the Supreme Soviet of the USSR on 1 September 1953. But it was only in January 1989 that this Presidium declared the practice of extra-judicial proceedings, including those conducted in the Special Council to be unconstitutional. However, until now NKVD-MGB OSO decisions on certain categories of cases (including those regarding POWs) have not been revoked and remain in force to this day.[21]

Trial of German Prisoners of War by the NKVD OSO (Special Council)

After the adoption of the Decree of April 19, 1943, "On measures for the punishment of fascist criminals responsible for the killings and torture of

21 For categories not subject to rehabilitation, see: *p. 1 Ukaza PVS SSSR ot 16 yanvarya 1989*; Zaytsev, *Sbornik zakonodatel'nykh i normativnykh aktov o repressiyakh i reabilitatsii zhertv politicheskikh repressii*, 186.

civilians and Soviet prisoners of war, for the punishment of spies, traitors from among the ranks of Soviet citizens and their accomplices" (further referred to as the April Decree), the majority of cases against POWs on charges of war crimes were brought before the organs of Military Justice (Military tribunals of troops of the NKVD-MVD territorial districts) and a small number to the Military Committee of the Supreme Court of the USSR. After the transfer of internal troops to the Ministry of State Security in January 1947, it was only the name that changed. Now these were Military Tribunals of Ministry of State Security forces. The structure enabled these Military Tribunals to hear cases following a "simplified procedure": namely, in the presence of the accused but without the participation of prosecutors, lawyers or witnesses being summoned to the courts. Obviously, in this case, there was no judicial process. Justice of such kind is not worthy of the name and cannot be deemed to have been as such, but it was accepted as being thus under Stalin's reign, and took fairly firm root in penal practice. After Stalin's death, Military Tribunals involving MGB-MVD troops were abolished, and the "simplified" procedure in considering cases was also abolished.

In what way did the procedure of extra-judicial proceedings conducted by the Special Councils differ from the "simplified" procedure employed by Military Tribunals? Strictly speaking, the presence of the accused at a Military Tribunal in itself was not enough to affect proceedings, since they sometimes lasted only fifteen to twenty minutes. It is true, however, that when the case was heard in a manner indicative of an open trial, then in terms of form and structure, all the necessary procedures were observed: a state prosecutor would be present, witnesses would be cross-examined and lawyers would be admitted to the case, although, of course, there could be no question whatsoever of independent lawyers let alone lawyers from abroad being involved.

With regard to the treatment and sentencing of German POWs, the NKVD OSO was governed by the need to comply with all the rights as those enjoyed by Soviet citizens; in effect the former possessed the same rights as Soviet citizens. Simply put, the NKVD OSO made no distinction between citizens of the USSR and foreigners. Although the NKVD OSO respected full procedural norms (as opposed to the "simplified" procedure of the Military Courts where the defendant was still present), it could be regarded as an extra-judicial body with the authority to pronounce death sentences (i. e. conviction *in absentia*); its decisions often contained links to laws or specific articles of the Criminal Code, but not always. In addition to the widely applied April Decree and Article 2 of Law No. 10 of the Control Council in Germany, the NKVD – MGB OSO based itself on the norms of domestic criminal law – Article 58 of the Criminal Code of Soviet Russia (counter-revolutionary crimes) and most often Point 6 of this article, which defined the

punishment for espionage, was used to convict German POWs. Members of German intelligence and counter-intelligence: Abwehr, Gestapo, SD and the like, were convicted under Article 58.6, although frequently reference was made only to the category to which the accused belonged (such as "perpetrator of reprisals", "perpetrator of atrocities", "terrorist", "participant in an anti-Soviet organisation", "dangerous due to social relations" etc.). This was also the difference between the Special Councils and the Office of the Special Sections of the Fronts in regard of the mechanism employed to conduct extra-judicial repression. When pronouncing death sentences on POWs in 1941-43, the Offices of the Special Sections of the Fronts did not bother to link such decisions to any laws or specific charges, but merely relied on the "theory" put forward by Latsis, and determined the "harmful nature" of the Germans sentenced to death, noting that they were "irreconcilable enemies of the Soviet Union".

Exact statistics are not available, but we can assume that before the adoption of the Decree of the Supreme Soviet of the USSR of April 19, 1943, the Special Council was the main body responsible for sentencing German POWs. But in the years 1943-1952, military tribunals were the main authorities for trying POWs. The Military Committee of the Supreme Court was allocated only the most important cases. As for the NKVD – MGB OSO, it clearly played a supporting role. It should, however, be said that we are aware of many examples of German POWs being sentenced in 1948-50 where such cases were examined by the MGB OSO. However, in general this related to prisoners whose cases were investigated by the Ministry of State Security and who were detained in its prisons (and not in MVD POW camps). As a rule, these were cases in which there was insufficient evidence or punishment was applied on the basis of formal evidence that such persons were members of the punitive organs and special services of the Third Reich.

Thus, in 1945-1947, prisoners were detained in NKGB-MGB prisons and convicted upon investigation by SMERSH counterintelligence or the 4th Directorate of the NKGB. Let us look at one of these cases.

In 1944, the 4th Department of the NKGB, headed by Pavel Sudoplatov, deceived the German command by subterfuge. It radioed a request for assistance from a group of German troops allegedly marooned behind Red Army lines. This imaginary group asked the German command to provide weapons, food, and medicine – and to evacuate the injured. A Ju-290 rescue transport aircraft was dispatched to assist; thus, its crew fell into the hands of the NKGB. The whole operation was codenamed "Berezino". For the role of commanders of the "encircled group" Sudoplatov picked POWs captured shortly before, namely German Army Colonels Scherhorn and Michaelis, who had agreed to cooperate with State Security. Radio communications

bearing their names were sent to Berlin requesting help.[22] But then the war ended. What was to be done with Luftwaffe personnel that had been arrested and detained in the Lubyanka, airmen whose guilt lay only in the fact that in fulfilling their duty and obeying an order to help fellow soldiers who found themselves in difficulty, they discovered that they had been deceived. Leaders of the NKGB and NKVD sent Beria a recommendation that they should be executed as unwanted witnesses. This is what they wrote on October 13, 1945:

"As a result of communication ruses carried out against German intelligence agencies by the NKGB until the end of the war, the following found themselves on the territory of the Soviet Union and were arrested by us:
1. 17 paratroop agents trained in German intelligence schools and dropped into Red Army territory to conduct subversive activities.
2. 10 members of the German special intelligence team 'South-East', dropped by German intelligence on the territory of Kalmykiya as part of two airborne troop drops for sabotage, reconnaissance and insurgent operations.
3. 7 traitors of the Homeland – spies (not paratroopers) dropped behind Red Army lines and on the instructions of German intelligence sought to carry out active hostile operations.
Of a total of 34 detainees: 20 were Germans, 10 Russians, 2 Poles, 1 Lithuanian, 1 and 1 Armenian.

The investigation in respect of those arrested by the NKGB USSR has been completed.
Given the gravity of their crimes against the Soviet Union, and also in order to preserve the secrecy of communication deceptions targeted against the Germans, we consider it expedient to consider these cases at a Special Council, including the imposition of the death penalty upon the accused.
The proposed punishment is consistent with the expressed views of the Deputy Prosecutor of the USSR, Comrade Lieutenant-General of Justice Vavilov.
In presenting the list of prisoners referred to herein, we seek your instructions.
V. Merkulov
B. Kobulov
V. Chernyshov".[23]

22 Leonid Reshin, 'Bez Grifa Sekretno: Skortseni, Sudoplatov *porazhenie cheloveka so shramom:* Vpervye rasskazyvaem o krupneishei v istorii vtoroi mirovoi voiny radioigre sovetskoi rasvedki s abverom', *Krasnaya Zvezda*, (September 23, 1995); *Ocherki istorii rossiiskoi vneshnei razvedki,* vol. 4, (Moscow, 1999), 120-8.

23 *TsA FSB F. 4 Op. 3 D.24 L.140.*

A list of 34 people was attached to the letter which was signed by the Chief of the 4th Directorate of the NKGB, Sudoplatov. The letter contained Beria's resolution granting consent to carry out the executions:

> "To Comrade Kobulov. Reported, Comrade Beria. Comrade Beria, no objection 17 / X. Merkulov"
> "To Comrade Ivanov.[24] Put these cases forward to the regular meeting O. S. Kobulov 17 / X.".[25]

As one can see, the activities of the German airmen were painted by leaders of the NKGB in pretty menacing tones. They decided to treat them as spies and saboteurs. But the war was over! Against whom was Soviet state security continuing to fight? With incarcerated, unarmed prisoners of war? Their case was heard by the NKVD OSO on October 19, 1945, and on October 26, an execution decree was issued against the ten – as named in Sudaplatov's list under point 2 of the letter:

> Wagner Wilhelm, 1911, commander of the Ju-290 transport aircraft
> Wiedeler Hans, 1917, radio operator
> Jenichen Heinrich, 1920, pilot of the aircraft
> Görgen Bruno, 1924, on-board gunner
> Kremer Willi, 1920, on-board gunner
> Melzer Willi, 1904, on-board engineer
> Möller Herbert, 1912, pilot
> Von Hogen Karl, 1924, on-board gunner
> Fritzges Heinrich, 1922, on-board gunner
> Zeuner Helmut, 1922, senior Lance Corporal.[26]

24 At the time, Vladimir Ivanov was the chief of the Secretariat of the Special Council (OSO) of the NKVD USSR and was responsible for the preparation and progress of affairs in the Special Council and the execution of its judgments. O. S. is an abbreviation meaning Special Council.

25 *TsA FSB F. 4 Op. 3 D.24 L.140.*

26 *TsA FSB F. 7 Op. 1 D.196.* As determined by the Military College of the Supreme Court of the Russian Federation no. 4N-0475/99 of 14 October 1999 they were classified as not subject to rehabilitation. As a result of this definition of the decision of the NKVD OSO of 19 October 1945, the relationship had changed and charges under Art. 58-11 (belonging to a counterrevolutionary organisation) of the Criminal Code of the RSFSR were excluded, and their actions were reclassified from Art. 58-6 (espionage) to Art. 17-58-6 RSFSR Criminal Code (participation in the form of complicity, since by being "in a special aircrew of the intelligence service of the enemy, they acted only to provide an opportunity to carry out espionage, reconnaissance and sabotage operations deep in the rear of the Soviet Union".

A day later, on October 27, 1945, Decrees on the execution of the Germans mentioned in Sudaplatov's list under point 1 of the letter (operation "Berezino") were issued:[27]
Wild Harri, 1922, on-board engineer.[28]
Voisk Rudolf, 1920, on-board engineer.[29]
Klaus Jeschke, 1912, doctor, Captain, German Army.[30]
Stibar Karl, 1919, on-board radio operator, Austrian.[31]

The executions of three Germans mentioned in Sudoplatov's list under point 1 – were not carried out. Their names were:

Pander Aleksander Reneevich, 1912, non-commissioned officer of SS troops, teacher at the Oranienburg School of subversion and intelligence.[32]

Sauter, Willy, 1924.[33]

Rüdiger Hank, 1923, radio operator.[34]

Under point 3 of the letter were the names of those arrested by the 4th Directorate of the NKGB and charged on single indictments, three of whom were Germans:

Lemke (aka Kalinovsky) Alfred Antonovich, 1923, German citizen, a non-commissioned officer in the German army, who with the aid of German intelligence infiltated a Polish partisan unit operating behind enemy lines.[35]

27 *TsA FSB F. 7 Op. 1 D.196.*

28 Convicted for espionage and sentenced to death by the NKVD OSO on 19 October 1945. Rehabilitated by decision of the Chief Military Prosecutor's Office of the RF on 30 November 1998.

29 Convicted for espionage and sentenced to death by the NKVD OSO on 19 October 1945. Rehabilitated by decision of the Chief Military Prosecutor's Office of the RF on 5 October 1998.

30 Convicted for espionage and sentenced to death by the NKVD OSO on 19 October 1945. Rehabilitated by decision of the Chief Military Prosecutor's Office of the RF on 5 October 1998.

31 Convicted for espionage and sentenced to death by the NKVD OSO on 19 October 1945. Rehabilitated by decision of the Chief Military Prosecutor's Office of the RF on 6 October 1998.

32 Convicted for espionage and sentenced to death by the NKVD OSO on 19 October 1945. Classified by the Military Court of unit 16666 on 30 October 1998 as unsuitable for rehabilitation.

33 Convicted for espionage and sentenced to death by the NKVD OSO on 19 October 1945. Executed on 27 October 1945. Rehabilitated by decision of the Chief Military Prosecutor's Office of the RF on 7 October 1998.

34 Rehabilitated by decision of the Chief Military Prosecutor's Office of the RF on 1 December 1998.

35 Convicted for espionage and sentenced to death by the NKVD OSO on 19 October 1945. Rehabilitated by decision of the Chief Military Prosecutor's Office of the RF on 23 November 1998.

Reinhardt Adolf, 1912, a German citizen, served in the "Sonder" regiment of the German army, which carried out punitive actions against partisans, an agent of British and German intelligence agencies, and on their orders attempted to covertly enter the territory of the USSR.[36]

Bernhard Franke, 1922, German citizen, senior Lance Corporal, under the guise of a deserter infiltrated a guerrilla unit, where he remained until joining up with the Red Army, then having received a special assignment from the NKGB, stole a horse and a gun and tried to escape and go over to the enemy."[37]

Sudoplatov demanded that they should also be executed.[38]

Executions in Lubyanka were not limited to those for whom sanctions had been demanded in the aforementioned letter addressed to Beria. The NKVD Special Council also judged and sentenced to death German soldiers whose cases were investigated by GUKR SMERSH. Among them:[39]

Hengstenberg Robert, 1908, German citizen, journalist, accused under Article 58-6 and "Decree of April 19, 1943" (for espionage against the Soviet Union and participation in the struggle against guerrilla forces). Sentenced to death by the NKVD OSO on October 6, 1945. Shot 26 October 1945.[40]

Gesch Kurt Walter, 1917. Sentenced to death for spying by the NKVD OSO on September 24, 1945. Shot on October 12, 1945.

Leimer Willi, 1912 Head of Department IV-2 of the Prague Office of the Gestapo, Hauptsturmführer (Captain). Sentenced to death for spying by the NKVD OSO on September 24, 1945. Shot October 12, 1945.[41]

Göttler Waldemar, 1915, sentenced to death by the NKVD OSO for espionage and terrorist activities on October 20, 1945. Shot 2 November 1945.[42]

36 Convicted for espionage and sentenced to death by the NKVD OSO on 19 October 1945. Rehabilitated by decision of the Chief Military Prosecutor's Office of the RF on 30 November 1998.

37 Rehabilitated by decision of the Chief Military Prosecutor's Office of the RF on 8 October 1998.

38 Meanwhile, contrary to the law "On the Rehabilitation of Victims of Political Repression", P.A. Sudoplatov, who had committed crimes against justice and the legal system and had permitted "violent actions against prisoners of war", is considered to this day as rehabilitated. See: Nikita Petrov, 'Chem Shkuro khuzhe Sudoplatova?', *Kommersant-VLAST',* 35 (September 4, 2001), 60-3.

39 *TsA FSB F. 7 Op. 1 D. 196.*

40 As determined by the Military Court of the Moscow Military District on 25 November 1998, deemed not suitable for rehabilitation.

41 As determined by the Military Court of the Moscow Military District on 28 October 1998, deemed not suitable for rehabilitation with the requalification of the charge from Article 58-6 of the Criminal Code of the RSFSR to points "b", "c" and "d" of paragraph 1 of Art. 2 of Law No. 10 of the Control Council in Germany.

42 As determined by the Military court of the Moscow Military District on 20 January 1999, deemed not suitable for rehabilitation.

Von Schoeller Eberhard, 1899, Captain in the German Army. Sentenced to death by the NKVD OSO for espionage on October 20, 1945. Shot 2 November 1945.[43]

Von Bayer Paul, 1891, sentenced to execution by the NKVD OSO on November 17, 1945 for spying and involvement in atrocities under Article 58-6 and "Decree of 1943". Shot November 30, 1945.[44]

Wolf Walter, 1902, sentenced to death under Article 58-4 by the NKVD OSO on November 17, 1945 for belonging to the German fascist party and for serving in the police. Shot November 30, 1945.[45]

Neugebauer Erich Friedrich, 1902, German army Lieutenant, sentenced to death by the NKVD OSO on November 24, 1945 for espionage. Shot December 11, 1945.[46]

Gil Herbert, 1900, Captain, German intelligence officer. Sentenced to execution by the NKVD OSO on December 1, 1945 for espionage and sabotage. Shot December 21, 1945.[47]

On September 22, 1945 another group of Germans was executed in Lubyanka, some of them in Luftwaffe uniforms as worn in photographs taken when they were imprisoned.[48] They were shot in accordance with the NKVD OSO Decree of September 8, 1945, having been indicted on a rather odd and incomprehensible charge: Wirus Helmut Emil, born in 1918, – for preparing a terrorist act, and Tiedt Gerhard, born in 1920, Haberecht Gerhard, born in 1923, Hetterich Eugen, born in 1920, Schneider Gerhard, born in 1921 – for participating in preparing a terrorist act.[49]

The story of the execution carried out by the 4th Directorate of the NKGB headed by Sudoplatov and his deputy Eitingon of the captured Germans would be incomplete without mentioning facts which have only recently

43 As determined by the Military Court of military unit 16666 on 30 October 1998, deemed not suitable for rehabilitation.

44 As determined by the Military court of the Moscow Military District on 3 Febraury 1999, deemed not suitable with the exception of the charge Article 58-6 (espionage) of the Criminal Code of the RSFSR and the abandonment of the charge under the "Decrecree of 19 April 1943".

45 As determined by the Military Court of the Moscow Military District on 27 January 1999, deemed not suitable for rehabilitation with the requalification of the charge from Article. 58-4 of the Criminal Code of the RSFSR to points "b" and "c" of paragraph 1 of Art. 2 of Law No. 10 of the Control Council in Germany.

46 As determined by the Military Court of military unit 16666 on 26 October 1998, deemed not suitable for rehabilitation.

47 As determined by the Military Court of military unit 16666 on 26 October 1998, deemed not suitable for rehabilitation.

48 *TsA FSB F. 7 Op. 1 D. 196.*

49 All five were by rehabilitated by a decision of the Chief Military Prosecutor's Office of the RF on 7 October 1998.

come to light concerning the inhuman experiments conducted on them in Lubyanka. A section of the 4th Directorate of the NKVD-NKGB operated laboratories that tested poisons, produced for the terrorist activities of Soviet State Security, on prisoners sentenced to death. But given that in cases handled by the 4th Directorate, one group of Germans, about whom we spoke earlier, was sentenced to death, yet other Germans, apart from POWs held at the time in Lubyanka, were not executed, we can conclude that some of them were not shot, but were brutally tortured to death during the testing of poisons.[50] This is according to the accounts of authors who were privy to the testimony of Colonel Mairanovsky of the Medical Service. Mairanovsky headed the toxicological laboratory of the 5th Section of the 4th Directorate of the NKGB:

"Around the end of 1945, Eitingon was ordered by Merkulov to attend Mairanovsky's experiment with new poisons in person. 'The test subject' – a group of Germans. Who they were – is seemingly unknown, but they had been sentenced to death."[51]

There are also stories about how a NKGB officer, I.N. Balishansky, was tasked to select as test subjects three Germans sentenced to death (note, we did not find decrees relating to the shooting of three individuals!). He was tasked with bringing them into the courtyard of the Varsanof'evsky Alley prison. In this building there was an area where death sentences were carried out, but there was also a special laboratory for testing poisons. The Germans were taken to the laboratory and the authors write the following:

"In the special laboratory they were given injections, after which within 14-15 seconds they safely passed into another world, as Mairanovsky, the Head of the laboratory described it."[52]

Although the authors of the above-cited book (one of them a prosecutor) argue that it is now virtually impossible to list the names of all the victims of criminal experiments conducted at Lubyanka because there are no surviving lists or reports relating to the work of Mairanovsky's special laboratory[53] – in fact this is not the case. Both lists and decrees relating to those sacrificed in Laboratory "X" were kept out of the reach of researchers in the departmental archive of the FSB[54] and a full review of decrees on the enforcement of sen-

50 Perhaps we are talking here about those whose names were not to be found on the lists for execution: Pander A., Sauter V. and Khank R. For more details, see Nikita Pietrow *Psy Stalina* (Warsaw, 2012), 67-79.

51 Vladimir Bobrenev and Valeri Ryazantsev, 'Varsanof'evskie prizraki', *Rodina*, 11 (1995), 56-7.

52 Ibid.

53 Ibid.

54 Nikita Pietrow, *Stalinowski kat Polski*, *Iwan Sierow* (Warsaw, 2013), 189. FSB – Federalnaya sluzhba bezopasnosti – Federal security service.

tences is now stored in the archive at Lubyanka (Fund 7) and a comparison of them with the lists of those sentenced to death at the time and the materials of Laborarатory "X" will help to clarify the picture.

It is interesting to note that in 1945, in some way, a situation typical for the initial period of the war was to recur. The advance of the Red Army in the "far West" resulted in a weakening of central control over the activities of numerous frontline POW camps. And there again, self-authorized violence resumed anew. Now, however, in contrast to 1941, if such instances came to light, punishment would be imposed.

One such case was considered at the NKVD OSO on December 26, 1945. The accused in this instance were the Commander of assembly point number 9 of the Northern Group of the Soviet Army Major Leonty Mamchich (born 1910) and a group of POWs at this assembly point. The essence of the matter was that Mamchich, in violation of the regulations, allowed certain German POWs to enjoy specific conditions, namely, privates Erich Frie and Staff-Sergeant Franz Sechkov were permitted to wear Red Army uniforms and granted the right of free movement with Frie being appointed a senior person in the camp. Frie and Sechkov, having enlisted the services of a few other POWs, and under Mamchich's supervision, engaged in the systematic murder of POWs. In May 1945, twenty nine POWs arrived at assembly point number 9 of UKR SMERSH. On Mamchich's order, they were placed in solitary confinement without being registered. Mamchich ordered both Frie and Sechkov to identify, out of the group of prisoners who had just arrived, those who were the most committed fascists and execute them. At the same time, Mamchich indicated where and how the bodies should be buried. Frie and Sechkov killed fifteen people in the group. From May to August 1945, they murdered thirty German POWs: former workers at concentration camps, members of the SS and those who spread Nazi propaganda in the camp. A group of prisoners of war led by Frie brutally beat and then strangled inmates in solitary confinement.

Information that such things were happening in a POW camp reached the Divisional NKVD Directorate of the Northern Group; the case itself became public and those responsible had to be punished. The investigation was carried out quickly by the Operational Directorate of GUPVI.[55] Frie, Sechkov and with them five more prisoners were arrested and taken to the Butyrka prison in Moscow. They were charged under Article 136 of the Criminal Code of Soviet Russia for committing murder, the severest punishment for which was the death penalty. Mamchich was charged only under Article 193-

55 GUPVI – Glavnoe upravlenie po delam voennoplennykh i internirivannykh – General Directorate for Prisoners of War and Internees.

17 "a" (malfeasance and negligence) which did not carry an excessively harsh punishment. But the remainder were sentenced to death by the Special Assembly of the NKVD (Minutes No. 49 dated 12/26/45) and on January 10, 1946 those listed below were executed:

1. Frie Erich, 1903, German, soldier in the German Army.

2. Sechkov Franz, 1901, Pole, a German citizen, Stabsfeldwebel (Warrant Officer).

3. Bemdorfer Fritz, 1910, German, soldier.

4. Biren Albert, 1920, Luxembourger, a soldier in the German Army since 1943.

5. Seidel Erich, 1924, German, Corporal.

6. Weidemann August, 1928, a German citizen of the USSR, born in Zhytomir region. He retreated with the Germans and then fought in the German Army until capture in February 1945.

7. Shcherban Pavel Timofeevich, 1910, a Ukrainian, retreated with the Germans and took German citizenship. From September 1944 until capture fought in the German Army.[56]

The reason that this case was conducted by the Special Council is understandable. The case needed to be conducted quickly and without any publicity. It also allowed the possibility of a brutal crackdown on the perpetrators of the crimes (prisoners of war) and, at the same time, allowed more lenient punishment for the organiser – a Soviet officer. The Special Council gave Mamchich a three year suspended sentence,[57] so, in the end, he did not even have to serve any term in prison.

Justice or a Political Charade? Soviet Political Show Trial Mechanisms Relating to German Prisoners of War, on the Example of the Kharkov Trial of 1943

The first public trials for war crimes and atrocities committed in German-occupied Soviet territory were held in 1943. In July, in Krasnodar, Soviet citizens who had collaborated with the German police[58] were sentenced; in September, four German soldiers were publicly executed in Mariupol. Finally, in December 1943, the trial of three Germans and one Russian citi-

56 *Tsa FSB F. 7 Op. 1 D. 198 L. 1-26.*

57 Ibid.

58 The trial took place on July 14-17, 1943 and ended with the public execution of eight of the accused "traitors of the Homeland, collaborators in the atrocities." See: *Vneshnyaya politika Sovyetskogo Soyuza v period Otchestvennoi voiny,* vol. 1, (Moscow, 1944), 633-4.

zen was held in Kharkov. One reason for the desire of the Soviet leadership to organise and carry out such trials as quickly as possible was the reaction of the entire world to the widely publicized discovery of crimes committed under the Stalinist regime. In 1941, the world learned how prisonners in Lvov had been executed by organs of Soviet State Security when the city was being abandoned by the Red Army (in June 1941). Similar executions took place in other cities in the first weeks of the war with Germany. In 1942, the existence of mass graves of those executed by the NKVD in 1937-1938 in Vinnitsa became widely known. Finally, news travelled the globe of Stalin's heinous crime, when in 1943, an international commission published its findings regarding the mass graves of Polish officers shot in the spring of 1940 in Katyn near Smolensk.

By giving maximum exposure to the brutal and ruthless policies and crimes of the Germans in their occupied territories, the Soviet Union thereby hoped to conceal or gloss over its own bloody crimes committed by the hands of Stalin's NKVD.

These first show trials in 1943 were not some spontaneous phenomenon. The decision as to their conduct was made by the Soviet ruling elite; the trials were carefully prepared and orchestrated with the country's leadership in every detail. The script of the trials was duplicated according to the established template and the verdict predetermined indeed, these were the tried and tested methods dating back to the hearings of the "Moscow Trials" of 1936, 1937 and 1938. But, at the same time, the Kharkov Trial of 1943 became the first and the last open trial conducted against the Germans during the war. It had a very unfavourable resonance and it was a propaganda belly flop. Only in late 1945 – early 1946 did the Soviet Union return to the practice of holding show trials with public sentencing.

There is no doubt that among the German POWs convicted in the USSR in the 1940s, there were serious war criminals. But on this occasion, the complete helplessness of the Soviet system to dispense justice in a legally correct manner and in accordance with international rules of law was laid bare. The Soviet political system, which sustained itself by means of terror, violence and disregard for human rights, did not know how to conduct legal proceeding of this kind – and, therefore, failed in its design. Thus, the format and nature of the Soviet legal proceedings against war crimes remained contrary to legal norms. In addition, the Soviet system was not in a position to judge German war criminals; it itself lacked the moral authority and right to do so, since the Soviet state had itself acted in a criminal manner.

The Trial in Kharkov (1943)

The mechanism and secret origin of how open trials of German POWs were prepared are clearly visible in the Kharkov trial. The first proposal for an open trial of German soldiers came from the Head of Military Counterintelligence of the Red Army (GUKR SMERSH), Viktor Abakumov. In a letter to Viacheslav Molotov on September 2, 1943 (number 223/A) he reported that in tightening the ring around Stalingrad in mid-January 1943, Soviet troops captured a German transit camp "Dulag-205" near the village of Alekseevka, where they found thousands of Red Army soldiers and officers who had died of starvation and exposure. Only a few hundred Soviet POWs survived – albeit in extremely emaciated and exhausted condition. In this regard, as Abakumov wrote, the military counterintelligence service SMERSH conducted an investigation and found the following guilty as charged:

1. Körpert Rudolf, born in 1886, Colonel, the former Commandant of "Dulag-205". Taken prisoner January 31, 1943 at Stalingrad.

2. Von Kuhn Werner, born in 1907, a nobleman, son of a general of the German Army, Lieutenant Colonel, former Senior Qaurtermaster of the 6th Army. Taken prisoner January 31, 1943 at Stalingrad.

3. Langheld[59] Wilhelm, born in 1891, Captain, a member of the NSDAP since 1933, a former counterintelligence officer with "Dulag-205". Taken prisoner January 31, 1943 at Stalingrad.

4. Mäder Otto, born in 1895, Lieutenant, a member of the NSDAP since 1935, former adjutant of the Commandant of "Dulag-205". Taken prisoner at Stalingrad January 31.[60]

The crux of the matter was that some 4,000 Soviet prisoners of war were cramped into a camp designed for 1,200 people, who were barely able to survive on the starvation rations they received. Furthermore, from December 5, 1942, the 6thArmy Chief of Staff, Lieutenant-General Arthur Schmidt denied the camp any food. Kuhn addressed Schmidt requesting that the camp be supplied with food. Schmidt, however, was unable to help. The situation of troops besieged and surrounded in Stalingrad was equally disastrous. Kuhn, seeing the desperate situation of prisoners of war, on one occasion, said despairingly to Mäder that it would be better to shoot the prisoners. Prisoners in the camp were dying each day and by the time of their liberation, some 3,000 people had died. The distribution of food was

59 In this document his surname is written as Lyangheld, in subsequent documents as Langheld.

60 *Tsa FSB F. 14 Op. 1 D. 21 L. 292-6.*

accompanied by mayhem with dogs having to be set upon the prisoners to restore order. Langheld, who, even prior to this, had experience of work in Soviet POW camps, willingly began to ply SMERSH with evidence. He said that similar situations prevailed in other camps, and what is more, he talked about the treatment of prisoners of war: "In the Poltava camp, German soldiers who made up a contingent of the guards, fired at the prisoners from small-calibre rifles because they urinated in the wrong place, not where it was stipulated."[61]

Abakumov reported that Körpert, Kuhn, Langheld and Mäder pleaded guilty and finished his letter with a proposal: "I would consider it appropriate to organise a transparent trial in case of any media coverage", and, of course, asked Molotov for instructions in this regard.[62]

The document bears evidence suggesting that the letter was addressed to Molotov alone, but passed on to Stalin all the same. Stalin made no adnotations because, probably, the matter seemed too trivial. The letter has a resolution from Molotov, written in blue pencil and undated: "With Comrade Vyshinsky. V. Molotov".[63] This meant that all questions about the possibility of a trial had to be discussed with Vyshinsky. So it would appear that Molotov, too, preferred to distance himself from the case. It must be assumed that even such an experienced organiser of show trials as Vyshinsky also did not see anything to be gained from the case, though, certainly, it was worth exposing German atrocities in public. After all, 3,000 Soviet prisoners had died. This made for a depressing picture of the Soviet regime's failure and defeat lurking in the background. And, where were the Germans to find food for Russian prisoners, if in the cauldron of Stalingrad German soldiers were themselves perishing from extreme exhaustion? Such circumstances did not provide material for triumphant court hearings or compelling propaganda. Probably, Abakumov lucidly explained this in the Kremlin, and he undertook to look for more serious reasons for such trials and suitable candidates for the role of defendants, because the idea of organising a trial (or trials?) was already in the air. Indeed, at this time, preparations were underway for the formulation of a declaration, and in October 1943 the Moscow Declaration "on Nazi responsibility for atrocities committed" was adopted.[64]

61 Ibid., L. 296.

62 Ibid.

63 Ibid., L. 292.

64 At the Moscow Conference of Foreign Ministers of the USA, Great Britain and USSR on the initiative of Churchill in October 1943 the "Declaration on the culpability of Nazis for atrocities that had been committed" (Moscow Declaration) was proclaimed, according to which the principle that German officers, soldiers and members of the National Socialist (Nazi) Party bore responsibility for German "atrocities, murders and executions". In accordance with the declaration it was pro-

What is interesting is the fate of those defendants whose prosecution failed. They were dealt with later, secretly and brutally. Körpert and Mäder were sentenced to death by the Military Court of the 3rd Baltic Front on October 9-10, 1944, under the April Decree[65] and executed on October 13, 1944. Kuhn was not spared either. He was sentenced to death on January 15, 1947 by the Military Court of the Moscow Military District under the same Decree and executed March 10, 1947. As for the Counterintelligence officer Langheld, Abakumov kept him in reserve and three months later produced him in the Kharkov show trial. We can assume that professional intelligence and counterintelligence officers, such as Langheld, were regarded as the best candidates for the role of repentant defendants willing to give "frank testimonies". For them it was a kind of continuation of their professional activity, without which life appeared boring. They played such "games" of interrogation and disclosure of secrets out of a sense of duty to the service, even before falling into the hands of Cheka security officers. Once in the hands of SMERSH, they soon saw in the Soviet Chekists "soul-mates" and naively believing that they might save their lives and successfully endure imprisomnent, they readily accepted the rules of the game dictated by SMERSH officers, hoping to outwit them. Perhaps this was the reasoning of Abwehr officer Wilhelm Langheld, but his ultimate demise was a sad one.

After the first failed attempt, Abakumov sifted out and chose new candidates to put in the dock, and gathered evidence against them. Soon, on September 28, 1943, he again sent a letter (No.251/A) to Stalin and Molotov, in which he wrote that in August and September 1943, counterintelligence agencies had established numerous facts regarding the extermination of Soviet citizens in specially-equipped gas chamber vehicles (*Gaswagen*). And, as Abakumov wrote, unlike the trial in Krasnodar, where only Soviet citizens

posed that those who had committed such acts be handed over and tried under the laws of those countries where these acts had been committed. See: *Sovyetskii Soyuz na mezhdunarodnykh konferentsiyakh perioda Velikoi Otechestvennoi Voiny 1941-1945,* vol. 1, *Moskovskaya konferentsiya ministrov inostrannykh del SSSR, SShA i Velikobritanii 19-30 oktyabrya 1943*, (Moscow, 1984), 336-7.

65 The Decree of the Presidium of the Supreme Soviet of the USSR "About measures for the punishment of German-Fascist criminals responsible for the murder and torture of the Soviet civilan population and Red Army prisoners of war, measures for the punishment of spies, traitors of the Homeland and their accomplices from the ranks of Soviet citizens" of 19 April 1943 became the main judicial instrument in the event of the indictment of German prisoners of war (henceforward in the text – the Decree of 19 April 1943). This decree was not published and right up to its annulment in 1983 it remained a secret normative act. It was not published until the 1990s: Irina V. Bezborodova, *Voennoplennye vtoroi mirovoi voiny: Generaly Vermakhta v plenu* (Moscow, 1998), 203-4.

had attested to the existence of such vehicles, SMERSH agents had now identified and arrested Germans. These were:

1. Retzlaff Reinhard, born in 1907, Sen. Corporal auxiliary police officer, attached to 560 Group Secret Field Police (GPF) at the Headquarters of the German 6th Army. Taken prisoner in January 1943 at Stalingrad.

2. Kirschfeld Robert, born in 1905, a translator, Junior Sergeant, captured in April 1943 near Smolensk.

3. Loyda Hans, born in 1912, Sen. Corporal, cryptoanalyst 612 Company of the 2nd Communications Intelligence Staff of the Central Front, voluntarily went over to the Red Army in February 1943.

Of these, according to Abakumov, only Retzlaff was personally involved in executions in Kharkov, while Kirschfeld and Loyda were only witnesses to such events, the former in Kharkov, and the latter in Smolensk. Abakumov went on to report that the driver of the Kharkov Gestapo, Bulanov, had also been arrested and that further investigations were underway. The letter was signed off with the traditional appeal: "I would believe it appropriate to organise transparent proceedings for the trial, with reports of it in the press."[66]

One can presume that Stalin looked favourably and responded positively to this venture, since it now looked as if they had a serious case.[67] Abakumov was encouraged and on November 18, 1943 sent the following letter (ref. No.313/A) addressed to Stalin and Molotov, in which he reported new evidence in the investigation of this case. Now, the accused under investigation were listed as Retzlaff, Kirschfeld and a new character. The latter was taken from an earlier Abakumov "project", an open trial which had failed; now willing to give testimony to the Soviet secret police, he would prove useful. And Abakumov presented him somewhat differently, emphasising his affiliation with German military intelligence, without any mention of the infamous "Dulag-205":

66 *TsA FSB F. 14 Op. 1 D. 5 L. 256-4.*

67 It is difficult to guess why Stalin reacted to the "gas wagons" in the way he did. One cannot with certainty state that he knew in detail about analogous NKVD practices with similar vehicles before the war. But judging by the fact that information about such methods of execution originated from senior staff members of the Moscow NKVD, Stalin must surely have been aware of such practices. According to evidence of NKVD personnel, the Moscow Directorate of the NKVD employed a specially equipped van to murder people; exhaust fumes were fed into the tightly sealed cabin of the vehicle which contained those condemned to death. See: *Komsomol'skaya Pravda* (October 28, 1990). According to a statement of a former member of staff of the Public Relations Centre of the KGB Directorate for Moscow and the Moscow region, a certain A. Oligov, such "mobile gas chambers" were used as early as 1936 (*Argumenty i fakty*, 17 [1993]).

Langfeld Wilhelm, born in 1891, a member of the Nazi Party since 1933, Captain of counterintelligence in the "Abwehr", taken prisoner on January 31, 1943.[68]

Abakumov reported that on November 16, 1943, Langheld admitted in the course of his interrogation that people had been executed on his orders and that he had beaten those under interrogation. In addition, now Kirschfeld, on November 15, admitted that he had participated in raids against partisans, in beatings during interrogations and in executions. There also appeared a new Russian – Kovalevsky, Viktor, born in 1918 – a former Staff Sergeant in the Red Army, who served under the Germans in SS punitive detachments in Smolensk. Loyda had seemingly been dropped as a defendant – and in this letter he is mentioned only as a witness. Ritz Hans, a member of the NSDAP, a Lieutenant, whose name cropped up for the first time, was also produced as a witness. In this message of Abakumov reference was made to the ChGK Act[69] relating to atrocities in Smolensk, signed by Burdenko, which referred to the anihilation of the Russian population, with blame squarely put on Simon, Commander of the "Adolf Hitler" SS Division.[70] Thereafter, Abakumov wrote about the need to facilitate the organisation of the trial in Kharkov, entrusting the examination of the case to the Military Court of the 4th Ukrainian Front under the chairmanship of Major General of Justice A. N. Myasnikov in open court with the participation of the parties, and requested that the prosecution be conducted by the military prosecutor of the Kharkov Military District, Colonel of Justice N. K. Dunaev. Abakumov

68 *TsA FSB F. 14 Op. 1 D. 5 L. 241-9.*

69 The Emergency State Commission for the establishment and investigation of German-Fascist occupiers (further ChGK). The Commission was set up by the Decree of the Presidium of the Supreme Soviet of the USSR of 2 November 1942. The primary function of ChGK was to act as the organ guiding the investigations of official authorities in the field and it recorded and summarised incoming field reports. ChGK activities were regularly published in the press. As a rule, when the ChGK dealt with responsibility for the crimes of specific individuals in the German Command or representatives of the occupying authorities, no proof of their guilt was cited. Most frequently the following formula was used: "The ChGK considers the following responsible for …" There would then follow a series of crimes committed in a speficied place and the surnames of "those responsible". Very often, ChGK acts were timed to coincide with the beginning of show trials. See: Nikita Petrov, 'Chrezvychainaya gosudarstvennaya komissiya i ee rol' v sudebnykh presledovaniyakh voennoplennykh Vermakhta v SSSR 1943-1950', in Stefan Karner and Vjacheslav Selemenev (eds), *Avstiitsy I sudetskie nemtsy pered sovetskimi voennymi tribunalami v Belarusi 1945-50* (Graz-Minsk, 2007), 49-76.

70 *Sbornik soobshchenii Chrezvychainoi komissii o zlodeyaniyakh nemetsko-fashistskikh zakhvatchikov,* (Moscow, 1946), 58-77.

suggested: "The accused Retzlaff, Kirschfeld, Langheld, Bulanov and Kovalenko[71] should be sentenced to death by hanging."[72]

As we can see, at this stage, three Germans and two Russians were involved in the case. But it turns out this was not the final version. On November 26, 1943, Abakumov sent to the Secretary of the Central Committee of the Communist Party Georgy Malenkov a draft decision of the Communist Party to conduct a trial in Kharkov on December 10-12, with charges laid againt Retzlaff, Kirschfeld, Langheld, Ritz and others. The overall management of the trial and its media coverage was assigned to Aleksandr Shcherbakov (Head of the Soviet Information Bureau [*Sovinformburo*] and Secretary of the Central Committee), Konstantin Gorshenin (Attorney General) and Abakumov.[73] The proposed 'screenplay' was reviewed and submitted by Abakumov the same day – which was approved without changes as Politburo Decree (b) (P42/185) of November 26, 1943. At this point, it was envisaged that four Germans and two Russians, who in the Politburo decree were listed as "others", without specifying their names, would be indicted.[74]

A week and a half later, on December 6, 1943, Abakumov sent Molotov the indictment concerning "the atrocities of the German fascist invaders in the cities of Kharkov and Smolensk." In this document, Ritz appeared as a defendant, which corresponded to the SMERSH proposal and the Politburo Decree of November 26; he was accused of being in charge of organising and carrying out executions. His rank and position – Deputy SS Company Commander of the SD "Sonder" Command – were cited in the text. There were new charges against the remaining defendants. So, Kirschfeld was accused of having participated in the extermination of people through the "gas vans", and Langheld of personal involvement in the executions. A new witness also appeared: Yanchi Geits, a staff member attached to a counterintelligence officer in "Dulag-231" prison camp. All in all, the four Germans and the two Russians already known to us (Bulanov and Kovalevsky) were charged. They were all, as mentioned in the document, detained in the inner prison in Lubyanka. They were to be indicted under the April Decree. The entire case was built only on the confessions of the defendants and witness testimonies – as tellingly revealed by the following phrase in the indictment: "No physical evidence in the case exists." The indictment was drafted by SMERSH's Head of the Investigation Department, Colonel Aleksandr Leonov, and approved on December 3 by Abakumov himself.[75]

71 In this document Viktor Kovalevsky is written as Kovalenko.
72 *TsA FSB F. 14 Op. 1 D. 5 L. 256-64.*
73 *TsA FSB F. 14 Op. 1 D. 5 L. 194-5.*
74 *AP RF. F. 3 Op. 57 D. 40 L. 25.*
75 *TsA FSB F. 14 Op. 1 D. 6 L. 161-3.*

But then, for some reason, there was a halt to the proceedings and the trial failed to open on the date designated by the aforementioned Politburo decree. The Soviet leadership had decided to exclude from the trial all prosecution materials relating to Smolensk and leave only those relating to Kharkov. To be sure, it was at this juncture that state security (NKGB) officials were examining the graves of Polish officers in Katyn and fabricating evidence and "new" data regarding the mass graves unearthed near Smolensk by the Burdenko Commission in the presence of representatives from abroad.[76] This was to take place in January 1944. But in December 1943, by which time evidence relating to the accusation that Germans were responsible for the shooting of Polish officers had not been falsified yet, any mention in a trial of German massacres in the Smolensk region, and silence about the shooting of the Poles, would have been viewed as indirect recognition of the fact that the Soviet version of Katyn was "tainted".

But this delay proved shortlived. Abakumov sent new versions of the indictment to Molotov on December 8, 1943 (with letter No. 330/A). The latest had the title "Indictment in the case of the atrocities committed by the German fascist invaders in Kharkov and in the Kharkov region".[77] There was no mention of Smolensk.

In the actual trial, which was held in Kharkov on December 15-18, 1943, four men stood in the dock: Langheld, Ritz, Retzlaff and Bulanov. The case was considered by the Military Tribunal of the 4th Ukrainian Front under the chairmanship of Major General of Justice A. N. Myasnikov. Colonel of Justice N. K. Dunaev appeared for the prosecution. The Court appointed N. V. Kommodov, S. K. Kaznacheev and N. P. Belov as counsel for the defence. Yes! The very same Kommodov and Kaznacheev, who represented the defendants in the notorious "Moscow Trials" of 1936-1938; their legal footwork was so nimble and effective on that occasion, that those whom they defended were executed.

The trial opened December 15, 1943, in the hall of the Opera House (21, Rymarskaya St.). The proceedings were widely reported in the local and national press. On December 16, the newspaper *Izvestia* printed an editorial with the headline "German fiends appear before Soviet court", thereby informing readers that the trial had begun. On December 19, at the end of the trial, *Izvestia* also reported on the death sentence, which was pronounced

76 Inessa Yazhborovskaya, Anatoli Yablokov, and Valentina Parsadanova, *Katynskii sindrom v sovetsko-pol'skikh otnosheniyakh* (Moscow, 2001), 346-8. See also: *Katyn: Plenniki neobyavljennoi vojny: Dokumenty i materialy*, edited by Rudolf Pikhoya and Alexandr Geishtor / compiled by Nataliya Lebedeva, Nelly Petrosova, and Boleslav Voshinskii (Moscow, 1997).

77 *TsA FSB. F. 14. Op. 1 D. 6 L. 110, 127.*

at 23:40 December 18. The verdict laid out the specific charges formulated against the accused: Langheld was accused of falsification of cases in which some one hundred people were executed, Ritz of involvement in shootings and beatings, Retzlaff of torture and falsification of investigations and the fact that he personally drove people into "gas chambers" and, finally, that Bulanov had transported men to face firing squads. The verdict in this case had been previously considered and approved in Moscow. On December 18, Abakumov sent the wording of the sentence to be delivered to Stalin and Molotov for their approval; the text of the sentence was accompanied by a covering letter (number 338/A), in which he wrote:

"In accordance with your instructions, I hereby present the draft of the sentence to be issued by the Military Tribunal of the 4th Ukrainian Front in the case of the atrocities of Nazi invaders in Kharkov and the Kharkov region.

The verdict was pronounced in the city of Kharkov by the Chairman of the Military Tribunal, Major-General of Justice Myasnikov.

The draft sentence was somewhat amended and reworked by the Prosecutor of the USSR Comrade Gorshenin, Deputy of the People's Commissar of Justice of the Russian Soviet Federal Socialist Republic, Comrade Perlov and by me.

The new text of the verdict has been agreed with Comrade Shcherbakov."[78]

The final version of the sentence contained the resolution: "Approved as amended. V. Molotov 12/18/43."[79] As can be seen by comparing the draft verdicts, major changes were not made, only a minor editorial correction. However, the whole issue of the sentence clearly indicates the absence in the USSR of independent courts free to make their own decisions; it also points to the tight control that was exercised over them by the party's supreme leadership. Even the TASS reports on the pronouncement of the sentences passed on the four accused in the trial were sent by Abakumov on December 19, 1943 to Stalin for approval (letter No. 339/A), and with a reminder that the draft had already been approved by the Secretary of the Central Committee and Head of the Soviet Information Bureau (Sovinformburo) Shcherbakov. Most likely, Stalin did not consider the draft and simply passed it on to Molotov, because the paper only carries the message: "Approved. Molotov 12/19/43."[80] Even the Secretary of the Central Committee Shcherbakov and the Head of SMERSH, Abakumov could not take a step without Stalin's and Molotov's permission.

78 *TsA FSB. F. 14. Op. 1 D. 6 L. 56-68.*
79 Ibid.
80 *TsA FSB. F. 14. Op. 1 D. 6 L. 54-5.*

The Kharkov trial was widely exploited in Soviet propaganda and was intended to reinforce popular hatred of the Germans. The proceedings were described in a separate book with verbatim transcripts (of course far from complete).[81] In addition, a documentary film about the trial was produced and screened in cinemas; the documentary was released under the somewhat Kafkaesque title "The trial has begun".[82] According to the report in *Izvestia*, the execution took place on December 19, 1943 at 11 o'clock. Around 40,000 spectators gathered in the town square. Under the title "Executioners to the gallows", the article described the public execution: "Howls of approval and shouts of 'Hurrah!' welcomed the announcement of the sentence as a crowd of thousands engulfed the square."[83] A couple of days after the trial the paper returned to the theme, printing "positive responses" to the trial from the United States and England, and articles by Soviet authors, such as Mikhas Lynkov[84] with the suggestive title "Creatures Possessed."[85]

The entire course of the trial was widely covered in the press. Foreign journalists and a group of prominent Soviet writers, among them Ilya Ehrenburg, were invited to attend the proceedings. Ehrenburg was always most influential in the formation of attitudes within the Red Army and the cultivation of extreme hatred towards the Germans. During the war, he published no fewer than 1,500 articles. Judging by his impressions of the first day of the trial, Ehrenburg could not hide his joy: "On this day, we stopped talking about the upcoming trial of the criminals. We began to judge them."[86] And he described the accused with scorn and disdain: "I scan the faces of the accused. Blank expressions. Despite the pathos of the situation, I want to say: the usual German Fritz. Captain Wilhelm Langheld seemed puzzled. This red-haired German – with harsh accent and evil nature. He probably could not understand it, how he, an Aryan, an interrogation specialist with a passion for his profession, found himself in the dock. Next to him sat Retzlaff, a corporal from the secret police. Large round spectacles. A vacant, empty face – save for these glasses; not a shadow of a thought or a flicker of emotion. Men like him kill, like others breathe – without even noticing. And

81 *Sudebnyi protsess o zverstvakh nemetsko-fashistskikh zakhvatchikov na territorii Khar'kova i Kharkov'skoi oblasti v period ikh vremennoi okkupatsii* (Moscow, 1943), 97.

82 Producer Il'ya Kopalin. See *Rossiiskii gosudarstvennyi arkhiv kinofotodokumentov (RGAKFD)*.

83 *Izvestia* (December 21, 1943).

84 Lyn'kov Mikhail Tikhonovich (1899-1975) – Belarusian writer and social-political figure; in the years 1938-1948 headed the Union of Writers of the Byelorussian SSR. Lyn'kov's wife and son were executed by the Germans in September 1941.

85 *Izvestia* (December 22 and 23, 1943).

86 Il'ja Ėrenburg, *Voina 1941-1945* (Moscow, 2004), 533.

the weedy Hans Ritz. He had the little moustache of some provincial dandy. He timidly preened himself."[87]

Thus, the proceedings progressed, the defendants were executed. However, the question arises, what happened to the defendants and witnesses not put on trial? It was established that Kovalevsky was sentenced to death by Court Martial of the 70th Infantry Division on May 2, 1944 under the April Decree. Kirschfeld was saved for the follow-up trial in Smolensk of December 15-20, 1945, where he was sentenced to death by hanging under the April Decree.

And what of the sad fate of the witnesses in the case? They themselves were imprisoned and were easy prey for SMERSH investigators. They were flung into cells to be "prepared" for other investigations to make sure of their lines for the organisers of the next trial. They provided the necessary evidence. And, to thank them for their pains, they were still indicted, after being incarcerated for some considerable time in Ministry of State Security prisons. They were the unwelcome witnesses who knew exactly the mechanisms at play in preparing show trials. Loyda was sentenced to twenty-five years on April 14, 1951 by the Ministry of State Security Special Council under Article 58-6 (espionage) of the Criminal Code of the Russian soviet republic. He was transferred to Germany on January 15, 1954, and only on June 2, 1976 was he fully rehabilitated. Yanchi was sentenced to twenty-five years on January 12, 1952, by the Military Court of the Moscow Military District, under Article 58-6 of the Russian Criminal Code and the April Decree. On October 10, 1955, he was handed over to the German authorities.

Open trials in the Soviet Union had never been the norm; decisions on how they should be conducted were typically taken by the Kremlin. They were carefully prepared, orchestrated and coordinated with the country's leadership in every detail. Nothing could happen without the approval and go-ahead from on high. As noted by observers at the time, the Kharkov trial (1943) was intended to demonstrate the determination of the Soviet government to bring to justice all those guilty of war crimes and atrocities.[88] However, this trial was to be the first and last open trial of German prisoners until the end of the war. In a sense, it even had a negative impact. Violations of the rights of the accused were all too apparent: they were not given leave to appeal against their sentences and they were denied the right to file petitions for clemency. To add to this charade of justice, the accused were charged by the tribunal under a law of which they had no knowledge, namely the April Decree – a law which had not appeared in print and whose

87 Ibid., 534-5.

88 Nataliya Lebedeva, *Podgotovka k Nyunbergskomu protsessu* (Moscow, 1975), 107.

power was retroactive. Moreover, at that time, military tribunals had not yet received the right to use such powers, as the April Decree could only be used in court-martials.[89] As modern day researchers point out, the Kharkov trial set "a precedent for the violation of the rights of the accused and legislation for the benefit of political interests."[90] Finally, the highly publicized show trial in Kharkov negatively affected the attitude of German soldiers and officers, who would no longer be tempted to surrender or cooperate with the Soviet authorities, having gained irrefutable proof of what it meant to go on trial under the Soviet regime. Perhaps this was the reason for the decision not to conduct more show trials against the Germans before the war ended.[91]

General Conclusions

There were at least two instances when the NKVD Special Council and the Directorate of Special Sections of the Fronts carried out extra-judicial reprisals against German prisoners of war. Together with these acts of retribution, lynch law executions of German soldiers also took place. These occurred as a means of avoiding taking prisoners and it is unclear to what extent this practice was encouraged from above. The widespread use of extra-judicial reprisals against POWs was in flagrant violation of international law. Did Stalin take note of this fact, and what considerations determined his position in relation to prisoners of war?

We can assume that Stalin approached the issue of POWs from the class perspective, preferring not to attach much importance to their status as citizens of other states. His view was based on an evaluation of their "harmfulness" or "usefulness" to the Soviet system. This explains the decision of March 5, 1940, on the execution of Polish officers. At that time, Stalin had no thought or concern about the possible re-establishment of Poland; for him Polish army officers, border guards and police officers were something

89 Andreas Hilger, Nikita Petrov, and Günther Wagenlehner, 'Der "Ukaz 43": Entstehung und Problematik des Dekrets des Präsidiums des Obersten Sowjets vom 19. April 1943', in Andreas Hilger, Ute Schmidt, and Günther Wagenlehner (eds), *Sowjetische Militärtribunale,* vol. 1, (Köln-Weimar-Wien, 2001), 177-209.

90 Alexander E. Epifanov, *Otvetstvennost' gitlerovskikh voennykh prestupnikov i ikh posobnikov v SSSR (istoriko-pravovoi aspect)* (Volgograd, 1997), 31. See also Viktor B. Konasov, *Sudebnoe presledovanie nemetskikh voennoplennykh v SSSR* (Moscow, 1998), 8-9.

91 In subsequent years, Red Army military tribunals reviewed a number of individual cases of German prisoners of war whose actions fell under the Decree of 19 April 1943. However, they received no media coverage and statistical information regarding these prosecutions is as yet unknown.

of a burden upon the Soviet Union and represented a very "hostile and dangerous contingent".

Much the same can be said of the German POWs in the early years of the war between the USSR and Germany. Stalin was preoccupied with one issue and one issue alone: whether the country would survive and whether he would be able to repel Hitler's onslaught. Right until the beginning of 1943 he was not so sure of the ground he stood on. Hence his collusion (if not encouragement!) in the massacres of POWs which were committed by Red Army commanders and the NKVD. Moreover, given unclear prospects for the outcome of the war, Stalin cared little about international opinion. Such considerations proved important only when it became evident the Soviet Union would triumph in the war.

In the publications of Russian historians, one can find the assertion that "the execution of Polish officers in the Katyn forest apparently convinced the Soviet leadership that citizens of foreign states merited different treatment to Soviet nationals, and any disregard of this 'rule' was fraught with complications at the diplomatic level."[92] Is this true? Most likely it was not the shooting itself, but the publicity surrounding it that convinced the Soviet leadership of the harmfulness in persevering with such a policy. The "Katyn syndrome", so to speak, was to remain the symbol of Stalin's policy towards prisoners of war until the beginning of 1943. In addition to the considerations cited above, there are several others which deserve attention. In the early days of the war, when relatively few Germans were captured on Soviet soil, incidents of extra-judicial killings were consequently limited and thereby hardly troubled Stalin. Moreover, Stalin himself had given instructions on the issue in his own inimitable way. When, on September 4, 1941, in a conversation with Stalin, Georgy Zhukov referred to the testimony of a German soldier who had gone over to the Soviet side. Stalin responded by saying: "Don't put too much trust in prisoners of war; interrogate him brutally, and then shoot him."[93]

This can be explained by the fact that in 1941-1942 Stalin was far from certain that Hitler would be defeated and he was not thinking of any "international complications" arising from the killing of German POWs. It was an altogether different matter after the Battle of Stalingrad, when Stalin began to believe in the possibility of the military defeat of Germany, and thereafter international public opinion came to play a crucial role in his calculations.

It is no coincidence that Stalin came to define 1943 as the year of "radical change in the course of the war". And here it is evident that the adoption

92 Konasov, *Sud'by nemetskikh voennoplennykh v SSSR*, 56.

93 *Izvestia TsK KPSS (News Central committee CPSU)*, 10 (1990), 216.

of the April Decree signified confirmation of Stalin's increasing intention to move his army on to the offensive. After all, the main candidates for punishment under this Decree were, in the Soviet leader's opinion, Soviet citizens who had served in the administration of the German occupation. The fact that this Decree was passed on the same day as the decree declaring that the organisation of the Military Counterintelligence SMERSH should be subordinated directly to Stalin is also ominous. Investigations under the April Decree were passed on to SMERSH. Consequently, the advancing Red Army and SMERSH, its Military Counterintelligence, were fully armed and prepared, and able to wield the Decree at will, as a tool to punish "traitors" and "accomplices of the Nazi occupiers". Of course we should not forget that the April Decree was aimed, as is clear from its title, against the "German-Fascist villains". However, we also know that this decree was employed in repressing an immeasurably greater number of Soviet citizens than foreigners. It is significant that the April Decree "died" with Stalin. After 1953, it was almost never used.

The predominant concern of the postwar period was the mechanism by which to prosecute German POWs. As regards extra-judicial repression (cases forwarded for examination by the NKVD-MGB OSO) applied to POWs, Stalin remained steadfast in his beliefs until his death. This mechanism was used even after the adoption of the April Decree and, even though it was essentially a back-up device, it could be employed in addition to the state's other Stalinist weapons of repression.

No reliable news on the fate of the majority of those POWs who fought the Red Army and were executed in the years 1941-45 was available for many years. The explanation is simple. In accordance with KGB Directive No. 108ss passed in 1955, it was decreed that queries about the fate of those sentenced to death, whose cases were considered by the State Security authorities, should be fobbed off with the po-faced assertion that they died in prison, quoting a fictitious date of death.[94] Later, in 1963, it was decided to give true information about executions with exact dates about the fate of Soviet citizens, but as previously, the truth about executions of foreign nationals was to remain suppressed. In response to enquiries about the fate of the latter, the policy remained to lie in accordance with Directive No. 108ss. And even to this day, historians and researchers have an incomplete picture, no statistics, on executions of prisoners of war or lists of those who mysteriously disappeared.

94 For the text of this directive, see: *Memorial –aspect*, 10 (1994), 12.

Łukasz Jasiński

Polish and Czechoslovak Retribution against Germany, 1945-1949: A Comparison[1]

This article aims at making a comparative analysis of the process of post-war retribution, in the period 1945-49, against war criminals and their collaborators during World War II in Poland and Czechoslovakia. It seeks to present both the basic legal and institutional solutions adopted to settle wartime scores by the authorities in Warsaw and Prague, and to highlight the similarities and differences in the course of this process in both countries. An important element in this analysis is also the attempt to answer the question: How did the different occupation experiences of these two countries, and the changing internal and international situation in 1945-1949, affect the course of each in "cleansing" themselves of their respective criminals and collaborators?

This text is based primarily on Polish, Czech, Slovakian, German and English publications on wartime guilt and its post-war punishment which took the form of retributive justice in both countries. These secondary sources are complemented by archival materials held by Poland's Institute of National Remembrance. As might be expected, Polish subject literature is concentrated on the Polish experience and contains few works on the post-war trials of criminals and collaborators in other countries, Czechoslovakia included.[2]

As a starting point for further discussion, I propose to give a short outline of the experience of the German occupation and its contingent terror and collaboration, in Poland and Czechoslovakia, in 1939-1945. Although both

1 This article was written as part of the research project: *"Punishment, memory and politics: Retribution against the past since the World War II"*, financed by the National Science Center (project: DEC-2013/10/M/HS3/00577).

2 See Piotr Maciej Majewski, *Niemcy Sudeccy 1848-1948: Historia pewnego nacjonalizmu* (Warsaw, 2008); Łukasz Jasiński, 'Powojenne rozliczenia w Czechosłowacji 1945-1948: Proces prawny i tło polityczne'*, Pamięć i sprawiedliwość*, 2 (2014), 253-81.

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countries fell victim to the aggression of the Third Reich at a similar time, each of them had a very different experience under German occupation.

After the Munich Agreement, which sanctioned the partition of Czecho-slovakia, the elimination of the state of the Czechs and Slovaks by the Third Reich was a matter of time.[3] German aggression against Czecho-Slovakia, as it was now called, became a fact, when on 15 March 1939, the Wehrmacht marched into Prague, meeting no resistance, and President Emil Hácha, blackmailed by Hitler, signed a document subjugating his country to the Third Reich. The Germans immediately established the Protectorate of Bohemia and Moravia (*Protektorát Čechy a Morava*), which could be defined as a sort of transitional occupied vassal state in advance of its total incorporation into the Reich.[4]

The initial partial autonomy enjoyed by the Czechs was gradually reduced by the Germans, until it virtually disappeared. In 1939-1945, the society of the Protectorate was highly polarized. The opposite poles attracted on the one hand ardent collaborators, and on the other, members of the resistance movement. Between them was "the silent majority" of ordinary people.[5] Throughout the whole period of existence of the Protectorate, the Germans had "a carrot and stick" approach, oscillating between attempts to gain popular support and sympathy, and severe repressions and terror. Several symbolic events are particularly significant here: the brutal crackdown on protests of 28 October 1939 in Prague, and the reprisals after the student demonstrations of 15 November 1939, related to the death and funeral of the student Jan Opletal, injured on 28 of October. As a consequence, the German authorities closed the universities and arrested large numbers of students.[6] The events that came to symbolise German terror in the Czech lands were the mass arrests and executions, notably the destruction of the villages of Lidice and Ležáky in May 1942, after the assassination of Reinhard Heydrich, the Acting Reich Protector of Bohemia and Moravia.[7]

The Slovak war experience of 1939-45 was quite different, which was to affect the subsequent process of retribution. On 13 March 1939, the previous Prime Minister of the autonomous Slovak government, the priest Jozef Tiso, under Hitler's pressure, proclaimed the formation of a separate Slovak

3 Wiesław Dobrzycki, *Historia stosunków międzynarodowych 1815-1945* (Warsaw, 2004), 459-60.

4 Pavel Maršálek, *Pod ochranou hákovego kříže: Nacistický okupační režim v českých zemích 1939-1945* (Prague, 2012), 240-1.

5 Maršálek, *Pod ochranou hákovego kříže*, 136.

6 Additionally, nine leaders of student organisations were executed by firing squad. See more in Detlef Brandes, *Die Tschechen unter deutschem Protektorat,* vol. 1, (Oldenburg-Munich-Vienna, 1969), 83-9.

7 Brandes, *Die Tschechen*, 260-6.

State (*Slovenský Štát*). The newly created state was a satellite collaborator of the Third Reich.[8] On the other hand the Slovak National Uprising of August-October 1944 was quelled by the Germans with bloodbaths in the countryside. As a result of the activities of the Security Police, SD operational groups, and counter-insurgency units, more than 5,000 people were murdered.[9]

Notwithstanding the Czech and Slovak experiences with German terror, it should be emphasised that the scale of war crimes committed in Poland was incomparably greater than anything experienced on the Veltava and the Danube. Even before the attack on Poland on 1 September 1939, Hitler and his entourage undertook steps to determine the future nature of the war and occupation. On 22 August 1939, during a meeting with the Wehrmacht general staff, the leader of the Third Reich defined the goals and methods of the campaign to be conducted against Poland. It was supposed to not only defeat Poland, but also to "physically destroy the enemy". In order to complete this task, Hitler ordered his forces to attack brutally, without mercy.[10] As observed by Anthony Beevor, for Hitler, the campaign in Poland, as well as its direct consequences, in many respects constituted an introduction to the later *Rassenkrieg,* a racial war against the USSR.[11]

The guidelines approving aggressive actions and crimes remained binding and operative until the end of the war. It is not possible to list here the whole catalogue of German crimes committed in Poland in 1939-1945. All social groups in Poland fell victim to terror, expropriation and other types of crimes.[12]

The Jewish community in Poland was also exterminated, along with – given that German-occupied Poland was where the Germans located their extermination camps – a greater part of European Jewry. According to Raul Hilberg, an outstanding researcher into these issues, more than 2,600,000 people were killed in the extermination camps alone.[13] This figure does not include the victims of the massacres, and executions carried out as from September 1939, and starvation, as well as the diseases plaguing the ghettos. According to various estimates, World War II caused the death of c. 2.7-3

8 Martin Lacko, *Dwuramienny krzyż w cieniu swastyki: Republika słowacka 1939-1945* (Lublin, 2012), 153.

9 Stanislav Mičev (ed), *Slovenské Narodné Povstanie 1944* (Banská Bystrica, 2009), 158-63.

10 Mark Mazower, *Hitler's Empire: Nazi Rule in Occupied Europe* (Warsaw, 2011), 105.

11 Anthony Beevor, *The Second World War* (New York, 2012), 36.

12 See Czesław Madajczyk, *Polityka III Rzeszy w okupowanej Polsce* (Warsaw, 1970); Richard C. Lukas, *The Forgotten Holocaust: The Poles Under German Occupation, 1939-1944* (Poznań, 2012); Timothy Snyder, *Bloodlands: Europe Between Hitler and Stalin* (Warsaw, 2011).

13 Raul Hilberg, *The Destruction of the European Jews*, vol. 3, (Warsaw, 2013), 1112.

million Polish Jews. However, the exact number of Polish Jews who lost their lives in the Soviet-controlled areas is yet to be determined.[14]

The brutal nature of the German occupation and the unheard of scale of the crimes that were committed were also a shock to the investigators who, as from 1944, had been preparing for the first war crime trials in Poland. Jerzy Sawicki, a prosecutor in the trial of the Majdanek death camp staff, held on 27 November – 2 December 1944 in Lublin, was so shocked by the scale of the crimes committed there that, in his summing up, he stated: "I feel helpless when I say the words 'death penalty' in this room. The [legal – ŁJ] measures are miniscule in face of such crime."[15]

Regardless of the differences in the wartime experiences of the two countries, the Germans were responsible for numerous brutal crimes in the last months of the war in Polish, Czech and Slovak lands without distinction. Crimes committed against captives in concentration camps deserve closer attention, especially the "death marches" that accompanied their evacuation from Poland and the Protectorate of Bohemia and Moravia.[16]

Other kinds of crimes committed in the Czech lands in the last months of the war included executions by firing squad of Czech political prisoners in the Small Fortress in Terezin. Other examples of crimes committed in the last days of the war included executions of civilians and the destruction of the town hall in Prague's Old Town during the uprising in May 1945.[17]

In the context of post-war retributions, and especially the investigations concerning German war crimes, "Special Action 1005" (*Sonderaktion 1005*) deserves mention. This was the German code name for their attempt to conceal any evidence of the crimes they had committed as from 1942. The removal of evidence included the exhumation of mass graves and burning the bodies.[18]

The first place of mass incineration of bodies was the extermination camp in Chełmno on the river Ner. This method was used to remove evidence of the murder of Jews of the Łódź ghetto when the decision came to close it.

14 Grzegorz Berendt, 'Straty osobowe polskich Żydów w okresie II wojny światowej', in Wojciech Materski and Tomasz Szarota (eds), *Polska 1939-1945: Straty osobowe i ofiary represji pod dwiema okupacjami* (Warsaw, 2009), 72-5.

15 Tadeusz Cyprian, Jerzy Sawicki, and Mieczysław Siewierski, *Głos ma prokurator* (Warsaw, 1966), 28.

16 More information on the "death marches" can be found in David Blatman, *The Death Marches: The Final Phase of Nazi Genocide* (Cambridge-London, 2011).

17 Benjamin Frommer, *National Cleansing: Retribution Against Nazi Collaborators in Postwar Czechoslovakia* (Cambridge, 2005), 41-2. More information on the uprising in Prague and the German crimes committed in its course is available in Stanislav Kokoška, *Praha v květnu 1945: Historie jednoho povstání* (Prague, 2005).

18 Jens Hoffmann, "*Das kann man nicht erzählen": Aktion 1005 – Wie die Nazis die Spuren ihrer Massenmorde in Osteuropa beseitigten* (Hamburg, 2013), 82-5.

This strategy was reproduced at other extermination camps: Sobibór, Bełżec and Auschwitz-Birkenau.[19]

"Special Action 1005" was continued in subsequent years in other mass execution sites in Poland. From the beginning of 1944, "Special Action 1005" was carried out in the Podlasie region. In the summer of 1944, special commando units initiated the removal of evidence of war crimes in the sub-Carpathian region near Rzeszów and Przemyśl. The large-scale incineration of bodies was also carried out by the Germans during the suppression of the Warsaw Uprising.[20]

It may be assumed that these evidence-hiding initiatives hindered the work of Polish investigators examining individual cases of war crimes and mass execution sites. In this respect, the investigators and prosecutors from Czechoslovakia certainly had an easier task, in that during the war in Bohemia, Moravia and Slovakia, "Special Action 1005" was not implemented.

The issue of punishing criminals and collaborators was a Polish and Czechoslovakian policy issue long before the end of World War II. Indeed, the authorities in exile of the two countries closely cooperated in their efforts to alert international opinion to the horror of it all, mobilising the Allies to prepare for the future redress of German crimes. On the initiative of both cabinets, on 13 January 1942, in St. James's Palace in London, the representatives of Belgium, Czechoslovakia, France, Greece, Luxembourg, the Netherlands, Norway, Poland, and Yugoslavia issued a special declaration, referred to as the "Declaration of St. James' Palace". This was a historical moment in which for the first time, the need to punish the perpetrators of war crimes as a major war goal of the signatory states was openly stated.[21] Referring to the provisions of the Hague Convention, the signatory states announced firm actions aimed at pursuing and bringing to justice the perpetrators of war crimes, and with the promise of ensuring that sentences are carried out.[22] Subsequently, both Poland and Czechoslovakia were to play an active role in the United Nations War Crimes Commission (UNWCC).[23]

Both the Polish and Czechoslovakian authorities in exile also gave deep consideration to the form of future retribution against the Third Reich. The result of the works of the Polish government in London was announced on

19 Hoffmann, *"Das kann man nicht erzählen"*, 224-31.

20 For more details see: Tomasz Szarota, 'Zacieranie śladów zbrodni: Zapomniana karta dziejów II wojny światowej', *Zeszyty Historyczne*, 160 (2007), 66-77; Tadeusz Klimaszewski, *Verbrennungskommando Warschau* (Warsaw, 1984), 24.

21 Ariel J. Kochavi, *Prelude to Nuremberg: Allied War Crimes Policy and the Question of Punishment* (Chapel Hill-London, 1998), 15.

22 Joe J. Heydecker and Johannes Leeb, *Der Nürnberger Prozeß* (Warsaw, 2006), 79.

23 Tadeusz Cyprian and Jerzy Sawicki, *Ludzie i sprawy Norymbergi* (Poznań, 1967), 51.

30 March 1943; this was the Decree of the President of the Republic of Poland "On penal liability for war crimes". This was the first detailed legal act in this field, adopted by a state belonging to the anti-Nazi coalition. Notably, the decree spoke of the need to make the leaders of the Third Reich and the perpetrators of the most serious crimes answer for their actions before an international tribunal established by the Allies, while other perpetrators should be made to stand trial before the courts of countries where they had committed their crimes, on the basis of local laws.[24]

The work effects of the Czechoslovakian government in exile could be seen considerably later. Although the first draft of the decree on retributive justice was ready by June 1943, it was approved more than a year later, in October 1944, after numerous discussions and revisions. However, President Beneš delayed signing this document, being of the opinion that the decree's content should first be consulted with representatives of the resistance movement in the country. Beneš revised his view at the beginning of 1945, as a result of the growing pressure of the Communist Party of Czechoslovakia. The decree, creating the legal grounds for retribution, was finally signed by Beneš at the end of February and passed into law on 6 March 1945, not long before the flight of the representatives of the government in exile to Moscow for negotiations with the communists.[25]

Regardless of the efforts of the governments in exile and the structures of the resistance movements in Poland and Czechoslovakia, the breakthrough and the actual beginning of the retribution processes in both countries was marked by the arrival of the Red Army and the end of the German occupation. The leading position in this field should be attributed to the Polish side, and more precisely, to the Polish Committee of National Liberation (Polski Komitet Wyzwolenia Narodowego), dominated by communists. On 31 August 1944, the PKWN issued a Decree "On the penalty envisaged for fascist-Nazi criminals responsible for murder, the abuse of civilians and prisoners of war, and traitors of the Polish Nation".[26] This legal act was amended many times and was binding throughout the Stalinist period. The *August Decree*, as it was called, was to become the longest binding decree in post-war Poland.[27]

The *August Decree* was to be enforced by courts established especially for that purpose. On the strength of the Decree of the Committee of 12 Septem-

24 Franciszek Ryszka, *Norymberga, prehistoria i ciąg dalszy* (Warsaw, 1982), 108-12.

25 Jasiński, *Powojenne rozliczenia w Czechosłowacji 1945-1948*, 258-9.

26 Journal of Laws of the Republic of Poland (Dziennik Ustaw-Dz. U. – further: JoL); JoL (1944/4/16).

27 Piotr Kładoczny, *Prawo jako narzędzie represji w Polsce Ludowej 1944-1956* (Warsaw, 2004), 176-7. A more detailed view on the "August Decree" is available in Andrzej Paczkowski's opening article.

ber 1944, Special Criminal Courts were established. They were to be made up of three-member panels (a judge and two jurors representing "the people"). In total, ten such courts were to operate in Poland. They were supposed to follow a simplified procedure according to which the date of the hearing was to be fixed within forty-eight hours of indictment, and the verdict was to be delivered immediately after the panel's so-called judicial conference. Appeals against sentences were not envisaged, and the Courts themselves were directly answerable to the Head of the Department of Justice of the Polish National Liberation Committee.[28]

The Special Criminal Courts were wound up in October 1946, when their competencies were transferred to district courts. In the statistical perspective, the achievements of these Special Criminal Courts were as follows: as a result of more than 4,500 cases, 2,471 criminals were sentenced, including 631 sentenced to death.[29] In total, between 1944 and 1951, 16,000 people, mainly Polish citizens, were sentenced under the *August Decree*. It is estimated that only 34% of those sentenced for war crimes under the *August Decree* were people of German nationality.[30]

From the very beginning, Polish retribution policy had a certain characteristic element, initially absent in the legal and institutional order of Czechoslovakia between 1945 and 1949: namely special research and documentation institutes and committees of inquiry, targeted on investigating and gathering evidence of German crimes. These institutions arose along with the front line moving westwards across Polish territories.

In August 1944, along with the Soviet authorities, the PKWN established the Polish-Soviet Extraordinary Committee for Examination of German Crimes in Majdanek.[31] Similar institutions sprang up shortly thereafter, such as the Commission for the Examination of German Crimes in Białystok. In September and December 1944, two commissions of this type were also set up in Warsaw: one covered the area of the Warsaw Voivodship, the sec-

28 Elżbieta Kobierska-Motas, *Ekstradycja przestępców wojennych do Polski z czterech stref okupacyjnych Niemiec: 1946-1950*, vol. 1, (Warsaw, 1991), 8-9.

29 Edmund Dmitrów, *Niemcy i okupacja hitlerowska w oczach Polaków: Poglądy i opinie z lat 1945-1948* (Warsaw, 1987), 234. Other data can also be found, indicating that the Special Criminal Courts issued rulings against 3954 people. At the same time, it is interesting to analyse the percentage of cases before Polish courts in particular years related to the *August Decree*. These were: in 1948-2.1%, in 1949-1.2%, in 1950-1.3%, and in 1952-0.5%. See Kobierska-Motas, *Ekstradycja przestępców wojennych do Polski,* vol. 1, 18-9.

30 Quoted after: Joanna Lubecka, 'Karanie niemieckich zbrodniarzy wojennych w Polsce', *Zeszyty historyczne WiN-u,* 34 (2011), 11-44, 21.

31 Alina E. Gałan, *Okręgowa Komisja Badania Zbrodni przeciwko Narodowi Polskiemu w Lublinie 1944-1999* (Lublin, 2010), 43-4.

ond, the city of Warsaw itself.[32] On 29 March 1945, the Commission for the Examination of German Nazi Crimes was set up in Oświęcim (Auschwitz – and further referred to as the Auschwitz Commission).[33]

On the same day, the Main Commission for the Examination of German Crimes in Poland was established by resolution of the Home National Council (Krajowa Rada Narodowa). Its scholarly and investigative rights were later codified by reference to the KRN Decree of 10 November 1945.[34] Interestingly, the authorities in Prague waited until 1946 before setting up a special commission to investigate war crimes. Unfortunately, as opposed to the Polish Main Commission, the details of this institution's operations and achievements remain unknown. Its functions were probably quickly taken over by the special working groups in the Czechoslovakian Ministry of Internal Affairs.[35]

While in Poland the form of retribution was shaped only by the communists supported by Stalin, in Czechoslovakia it came after protracted negotiations between two centres of power: the government in London led by President Edvard Beneš, and the communists supported by Moscow.[36] In addition, presenting a *fait accompli*, in the already liberated Slovak lands, on 15 May 1945, the 'plenum' of the Slovak National Council *(Slovenská Národná Rada)*[37] issued Decree No. 33 "On punishing fascist criminals, occupants and traitors, and the establishment of people's courts".[38] This document was

32 Czesław Pilichowski, *Działalność i wyniki pracy Głównej Komisji i Okręgowych Komisji Badania Zbrodni Hitlerowskich w Polsce 1944/45-1980* (Warsaw, 1980), 8; Archive of the Institute of National Remembrance (further: AINR), GK 162/141, *Sprawozdanie Komisji dla zbadania zbrodni niemieckich w Warszawie z dnia 20 lipca 1945,* 20.

33 Ryszard Kotarba, 'Okręgowa Komisja Badania Zbrodni Hitlerowskich w Krakowie 1945-1953', *Krzysztofory: Zeszyty Naukowe Muzeum Historycznego Miasta Krakowa*, 17 (1990), 66-74, 67.

34 JoL 1945/51/293.

35 Kateřina Kočova and Jaroslav Kučera, '"Sie richten statt unser und deshalb richten Sie hart." Die Abrechnung mit deutschen Kriegsverbrechern in der Tschechoslowakei', in Norbert Frei (ed), *Transnationale Vergangenheitspolitik. Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg* (Göttingen, 2006), 438-73, 471.

36 Frommer, *National Cleansing*, 77.

37 The Slovak National Council was established in 1938, and operated underground as the main Slovak resistance movement authority, made up of representatives of the democratic and communist parties. It took active part in the preparations for the uprising in Slovakia. In 1944, it declared its existence openly in Banska Bystrica and acted as a surrogate government in areas controlled by the insurgents. Its representatives also participated in negotiations with the government in London and the communists in Moscow on the status of Slovaks in post-war Czechoslovakia. See Anna Josko, 'The Slovak resistance movement', in Victor S. Mamatey and Radomír Luža (eds), *A History of the Czechoslovak Republic 1918-1948* (Princeton, 1973), 362-383, 371-5.

38 Marek Syrný, *Slovenski Demokrati '44-48: Kapitoly z dejín demokraticke strany na Slovensku v rokoch 1944-1948* (Banská Bystrica, 2010), 274-5.

produced by the leader of the Slovak Communist Party, Gustáv Husák, who wrote the whole text in one evening.[39] In view of this, the government in the already liberated Prague decided to revoke the previous February Decree and adopt new legal regulations.

It resulted in a situation where the form of retribution was mainly determined by two different legal acts, applicable in Czech and Slovak lands. The basis for retribution in the Czech territories[40] was "Decree No. 16 of the President of the Republic of 19 June 1945 concerning the punishment of Nazi criminals, traitors and their helpers and establishing extraordinary people's courts", popularly known as "The Great Retribution Decree".[41] This legal act covered four groups of crimes that were significantly broader than the provisions of the Polish equivalent. "The Great Retribution Decree" differentiated crimes against the state, against persons, against personal possessions and property, and extended to (criminally motivated) denunciation.[42] Each of these extremely broad categories was then fleshed out in detail, which constituted another difference as compared to the Polish *August Decree*. It should be enough to say that these four categories covered altogether twenty-two types of crimes. Their list was partly influenced by past experiences of the Czechs related to the activities of Sudeten Germans and their SdP party (*Sudetendeutsche Partei*) before the Munich Agreement.[43]

Cases examined on the strength of the "The Great Decree" were, like in Poland, the province of special Extraordinary People's Courts which operated in 1945-1948. Twenty-four such Extraordinary People's Courts operated in Czechoslovakia.[44] Taking into account the difference in size between Poland and Czechoslovakia, the network of special courts designed to judge criminals and collaborators was significantly denser in Czechoslovakia than in Poland.

The sessions of the Extraordinary People's Courts were to be held in five-member Senates. The heads of these Senates always had to be profes-

39 Mečislav Borák, *Spravedlnost podle dekretu: Retribučni soudnictví v ČSR a Mimořadný lidový soud v Ostravě (1945-1948)* (Ostrava, 1998), 82-3.

40 The term Czech lands should be understood as part of the Third Republic, covering the historic lands of Bohemia, Moravia and Silesia. Slovakia, as mentioned above, had separate legal regulations on post-war retributive justice.

41 Borák, *Spravedlnost podle dekretu*, 444.

42 Kočova and Kučera, "'Sie richten statt unser und deshalb richten Sie hart"', 448; Eva Janečkova, *Proces s protektoratni vladou* (Prague, 2012), 40-1.

43 The first category included such crimes as: attacks on the Republic or participation in their preparation, posing a threat to the Republic's security, treason and betrayal, acts of violence against constitutional state authorities, membership in the SS and similar organisations, leadership of the NSDAP or SdP and similar organisations, supporting the National Socialist movement. See Frommer, *National Cleansing*, 80.

44 Borák, *Spravedlnost podle dekretu*, 48.

sional civil or military judges appointed by the President. Like in Poland, the composition of these courts was also to include people from outside the judiciary, so-called "people's judges", nominated by political parties and sworn in by local government representatives.[45] One similarity to the Polish Special Criminal Courts was the simplified procedure. Proceedings in particular cases could last no longer than three days, on pain of being referred to the common courts. Judges issued rulings at closed sessions, directly after the hearings. Like in Poland, appeals against sentences were not envisaged.[46]

"The Great Retribution Decree" formed the basis for punishing criminals and collaborators in the Czech lands. It was complemented by "Decree No. 138 of the President of the Republic concerning the punishment of some offenses against national honour", adopted on 27 October 1945, referred to as "The Small Retribution Decree". This provision was introduced with the aim to judge crimes that were not covered by "The Great Decree". This included, first of all, the punishment of attitudes and behaviour in 1938-1945 considered offensive to the national feelings of Czechs and Slovaks, and which provoked public outrage.[47]

The provisions of "The Small Retribution Decree" aroused widespread criticism due to the fact that it left the examination of cases not to the courts, but to local government bodies called District National Committees. They could decide on imposing fines of up to one million korunas, hand down prison sentences for up to one year or publicly stigmatise those found guilty as charged, which was referred to as "public punishment".[48] At the same time, District National Committees were obliged to appoint special committees of inquiry tasked with investigating individual cases of people suspected of violations specified in "The Small Decree". This complex two-tier procedure caused many complications in practice.[49]

Because "The Small Retribution Decree" contained very imprecise and vague terms of reference like national honour, before it passed into law, the Minister of Internal Affairs issued special guidelines on how to interpret its provisions.[50] They included a list of specific examples of collaboration and behaviour offensive to national honour.[51]

In Poland, an equivalent of "The Small Retribution Decree" may be, in a sense, the Decree "On penal liability for deviation from Polish national-

45 Frommer, *National Cleansing*, 444-446.
46 Ondřej Koutek, *Prokop Drtina: Osud československého demokrata* (Prague, 2011), 193.
47 Borák, *Spravedlnost podle dekretu*, 48.
48 Koutek, *Prokop Drtina,* 195.
49 Pavel Kmoch, *Provinění proti národní cti* (Prague, 2015), 152-5.
50 Kmoch, *Provinění proti*, 105-6.
51 Ibid., 107-8.

ity during the war of 1939-1945", issued on 28 June 1946 by the Council of Ministers. This legal act particularly enabled the punishment of people who registered themselves on the German People's List during the war (*Deutsche Volksliste*). Under this Decree, such persons could be sentenced to ten years in prison. The list of immediately applicable penal instruments was complemented by fines, loss of civil and civic rights, or confiscation of property.[52]

Cases involving major Nazis were examined by the Prague Extraordinary People's Court. It sentenced, among others, Karl Hermann Frank, the former secretary of state in the Office of the Protector and the Minister of Bohemia and Moravia. He was sentenced to death and executed on 22 May 1946.[53] Czechoslovakia did not establish a special tribunal for trying only the major government representatives of the Third Reich responsible for the terror in Czech lands.

In view of the number of cases examined by the Extraordinary People's Courts, "The Great Retribution Decree" was extended twice before being finally revoked on May 4, 1947 which, by the same token, marked the end of the Extraordinary People's Courts. The parliamentary debate concerning the end of retribution was the most turbulent debate in the period of 1945-1948.[54] At the time of expiry of the decrees on retribution, three hundred and thirty-four proceedings were still in progress. Considering the above reservations, in total, the Extraordinary People's Courts sentenced 21,342 people, 19,888 of whom were sentenced to imprisonment for various lengths of time including 741 to life sentences and 713 were sentenced to death.[55]

Attention should also be paid to the issue of the impact of the expulsion of Germans on the process of redress in Czech territories. In view of the fact that this was a priority for the government in Prague, in July 1946, the Czechoslovakian Parliament adopted legal solutions enabling the opting out of conducting court proceedings when the defendants were expelled from the country. On the same basis, the Ministry of Justice could rule on the commutation or remission of a penalty, or the stay of execution.[56] Therefore, the issue of bringing to justice many people of German nationality (mainly Sudeten Germans) was partly sacrificed on the altar of the more urgent priority, to expel and be rid of the hostile German minority. This was one of the

52 JoL 1946/41/237. For more details on this decree see Andrzej Paczkowski's article in this volume.

53 Koutek, *Prokop Drtina*, 197.

54 Ibid., 263.

55 These statistics were included in Minister Prokop Drtina's speech in Parliament, constituting a summary of the previous retributions, and differ slightly from the data contained in the monthly court reports sent to Prague. The reason for this discrepancy has yet to be determined. See Borák, *Spravedlnost podle dekretu*, 72.

56 Kočova and Kučera, "'Sie richten statt unser und deshalb richten Sie hart"', 457-8.

vital elements of the formation of a new order, not only in Czechoslovakia, but throughout Europe.[57] It is estimated that nearly fifteen thousand proceedings initiated before the Extraordinary People's Courts were terminated so as to allow their expulsion from Czechoslovakia.[58]

Meanwhile, in Poland, the dilemma of whether Germans should be expelled instead of standing trial was basically non-existent because most German perpetrators and collaborators escaped as soon as the ground began to shift under their feet in early spring 1945.[59]

It should be recognized that post-war retribution in Slovakia was of a more specific character. Its form was shaped by the Decree of May 15, 1945, which, as compared to legal acts related to the Czech part of the country, distinguished five groups of crimes. The reason for this was the different wartime experience of the two halves of the country, such as treason in regard of the uprising of 1944, and provisions concerning foreigners in military formations fighting the Red Army, other Allies and partisans.[60] It addressed additional issues such as supporting Hlinka's Slovak People's Party and the Hlinka Guard, the mainstays of Slovakia's Nazi puppet regime, and the problem with those whose behaviour was considered improper, for example, those who forced others to work in support of German interests. These offences were punishable by up to two years' imprisonment and from two to fifteen years of deprivation of civil rights, or a public reprimand. In a sense, this Slovakian article was the equivalent of the Czech Small Retribution Decree.[61]

Retributive justice in Slovakia was to be dispensed by People's Courts, which – like in the Czech lands and in Poland – were based on the concept of "people's judges" and simplified procedures. As opposed to the Czech solutions, they were supposed to function on three administrative levels: district, county, and state courts.[62]

The balance of retribution in Slovakia was much smaller than in Bohemia and Moravia. Although 20,550 people were brought before the courts, only 8,058 were sentenced. The death penalty was delivered in sixty-five cases, twenty-nine of which were carried out. Sixty percent of the convicts were of Hungarian nationality, which was typical of the post-war retribution in Slovakia. Only twenty-nine percent of the sentences related to Slovaks.[63]

57 For more details see: Philipp Ther, *Ciemna strona państw narodowych: Czystki etniczne w nowoczesnej Europie* (Poznań, 2012), 266 *et seq*.
58 Frommer, *National Cleansing*, 259.
59 Zofia Wóycicka, *Przerwana żałoba: Polskie spory wokół pamięci nazistowskich obozów koncentracyjnych i zagłady 1944-1950* (Warsaw, 2009), 176-7.
60 Igor Daxner, *L'udactvo pred Národným Súdom 1945-1947* (Bratislava, 1961), 39.
61 Borák, *Spravedlnost podle dekretu*, 84-5.
62 Kočova and Kučera, '"Sie richten statt unser und deshalb richten Sie hart"', 455.
63 Ibid., 455-6.

Both in Poland and in Czech and Slovak lands, apart from special courts, there were extraordinary tribunals tasked with sentencing either major Third Reich figures extradited by the Allies to the scenes of their crimes, or the more eminent collaborators. However, significant differences could be observed between these judicial authorities.

In Poland, the Decree of the Council of Ministers of 22 January 1946 established the Supreme National Tribunal. In 1946-1948, seven trials of the main German criminals extradited to Poland were held before this special court.[64] Interestingly, no trial concerning collaboration was ever brought before this Tribunal.[65]

The equivalents of this Polish Tribunal operating in Prague and Bratislava were of different nature and purpose. The National Court, based in Prague, was established by the Decree of President Beneš of 19 June 1945. It was supposed to try the former President of the Protectorate of Bohemia and Moravia, Emil Hácha (which never took place),[66] members of the Protectorate's government, and persons considered to be major collaborators. The National Court examined thirty-six cases against eighty persons. Sixty-five people were sentenced, and fifteen acquitted. Eighteen people were sentenced to death, fifteen of whom were actually executed.[67] The most famous trial, running from 26 April to 31 July 1946, was that of ministers in the successive collaborationist cabinets. Two prime ministers of the Protectorate also ended up in the dock: Jaroslav Krejči and Richard Bienert.[68] Ultimately, relatively

64 People sentenced by the Tribunal included: former *Gauleiter* of Warthegau Arthur Greiser, commandant of the camp in Płaszów Amon Göth, head of the Warsaw District Ludwig Fischer, chief security police officer Josef Meisinger, head of the Ordnungspolizei in Warsaw Max Daume, Warsaw county governor Ludwig Leist, commandant of KL Auschwitz Rudolf Höss, 40 staff members of KL Auschwitz, *Gauleiter* of the Reich District Gdańsk-Western Prussia Albert Forster, and Chief Executive of the General Government Josef Bühler. For more details see: Izabela Borowicz and Maria Pilarska (eds), *Główna Komisja Badania Zbrodni przeciwko Narodowi Polskiemu: Informator* (Warsaw, 1997), 8.

65 Janusz Wróbel and Marek Słojewski, 'Zbrodnie sądowe z oskarżenia o kolaborację z nazistami. Procesy kierownictwa PKB, "Startu" i Okręgowego KWP przed Sądem Wojewódzkim w Warszawie', in Witold Kulesza and Andrzej Rzepliński (eds), *Przestępstwa sędziów i prokuratorów w Polsce lat 1944-1956* (Warsaw, 2001), 85-108, 85-6.

66 Due to Hácha's ill-health, the attempts to interrogate him were unsuccessful. The former President of the Protectorate died on 27 June 1945 in prison hospital in Pankrace, Prague. See Mariusz Surosz, *Pepiki: Dramatyczne stulecie Czechów* (Warsaw, 2010), 165.

67 Prokop Drtina, *Na soudu národa: Tři projevy ministra spravedlnosti Dr. Prokopa Drtiny o činnosti mimořádných lidových soudů a Národního soudu* (Prague, 1947), 25.

68 Janečkova, *Proces s protektoratni vladou*, 108.

mild prison sentences were handed down, with no death sentences, which sparked heated discussions and controversies.[69]

While the Polish Tribunal was set up only to sentence the main German criminals and the National Court in Prague only tried collaborators, the Council functioning in Bratislava, on the strength of the Decree of 15 May 1945, dealt with both categories of defendants. The most famous trial before the National Council in Bratislava was undoubtedly that of the German-sponsored President, Fr. Jozef Tiso. During the proceedings, running from 2 December 1946 to 15 April 1947, the defendants in the dock, apart from Tiso, included the Minister of Internal Affairs and the Head of the Hlinka Guard, Alexander Mach. The former Slovak Minister of Foreign Affairs, Ferdinand Ďurčanski, was tried *in absentia*, as he fled to Argentina before the end of the war. The trial in Bratislava ended with Tiso being sentenced to death. The same sentence was delivered *in absentia* to Ďurčanski. Alexander Mach was sentenced to thirty years in prison.[70]

The National Council in Bratislava also examined cases of high-ranking officials of the Third Reich. The 3 December 1947 marked the end of the trial of general Hermann Höfle, who led the suppression of the uprising in Slovakia of 1944, and of Hanns Elard Ludin, the Third Reich's ambassador in Bratislava. Both defendants were sentenced to death.[71]

It is impossible to conduct a full and thorough comparison of the Polish and Czechoslovak retributive justice schemes against those deemed to have been wartime criminals without referring to geopolitical realities and indicating the twists and turns of internal policy in both countries. As a result of World War II, both Poland and Czechoslovakia ended up in the Soviet-dominated half of Europe. However, the internal situations in both countries differed. In Poland, from the very beginning, the dominant role was played by the communists of the Polish Workers' Party. They implemented the gradual policy of sovietisation of Poland and destruction of both the anti-communist underground and the political parties trying to conduct legal opposition activities. The main example of such actions was the disruption of the Polish Peasant Party, led by the former Prime Minister of the government in exile, Stanisław Mikołajczyk.[72]

69 Janečkova, *Proces s protektoratni vladou*, 185.

70 Ivan Kamenec, *Tragédia politika, kňaza a človeka (Dr. Jozef Tiso 1887-1947)* (Bratislava, 1998), 138.

71 Daxner, *L'udactvo pred Národným*, 178-85.

72 On the disruption of the Polish Peasant Party and the political concepts of S. Mikołajczyk see Andrzej Paczkowski, *Stanisław Mikołajczyk, czyli klęska realisty: Zarys biografii politycznej* (Warsaw, 1991), 138; Janusz Gmitruk, *Rola dziejowa Stanisława Mikołajczyka* (Warsaw, 2007), 50-61.

As from 1945, the Ministry of Justice was in the hands of the Polish Workers' Party activist Henryk Świątkowski. At the same time, the communists commenced actions designed to manipulate the retribution policy in order to eliminate any opponents of the new system. For this purpose, they used the provisions of the *August Decree*. As from 1946, this Decree contained a provision on punishing affiliations with any "political group which operated in the best interest of the German State". This clause was invoked in many trials of officers and soldiers of the Home Army on fabricated charges.[73] The provisions of the *August Decree* were thus incorporated into the propaganda of the Polish Workers' Party on the notion that the Polish communists and units of the People's Guard and the People's Army were at the forefront of the struggle against the Third Reich, while the Home Army were alleged to have stood "with their arms at ease" during the war.[74] An excellent example of the expedient exploitation of the provisions of the *August Decree* was the case of Kazimierz Moczarski, an officer of the Bureau of Information and Propaganda of the Home Army High Command and the District Directorate of Underground Resistance in Warsaw; he received the death sentence in 1952 in the Directorate trial, which was commuted to life imprisonment.[75] The example of Moczarski, who was actually imprisoned in 1945, deserves special attention. During the investigation, he was subjected to wide-ranging physical and mental chicanery and abuse, one of which was placing him in one cell with the SS general responsible for the destruction of Warsaw's Jewish ghetto, Jürgen Stroop. This was supposed to humiliate the Home Army officer. Moczarski then described this experience in his book *Conversations with an Executioner*. In the end, Moczarski was released in 1956, as a result of de-Stalinisation, and officially rehabilitated.[76] The situation in Czechoslovakia in 1945-1948 was different, during the so-called Third Republic. Despite the considerable influence of the communists, they had to share their power with the democratic parties. In addition, important functions were performed by politicians who returned from exile, led by President Beneš.[77] The Ministry of Justice was entrusted to the charge of Prokop Drtina, who was not associated in any way with the communists. On the other hand, like in Poland, the communists, controlling the Ministry of Internal Affairs and the special internal security services, strove to influence the course of retribution,

73 Dmitrów, *Niemcy i okupacja hitlerowska w oczach Polaków*, 183-6.

74 Marcin Czyżniewski, *Propagand a polityczna władzy ludowej w Polsce 1944-1956* (Toruń, 2005), 178-9.

75 Wróbel and Słojewski, 'Zbrodnie sądowe z oskarżenia o kolaborację z nazistami', 85-6.

76 For more details see, e.g.: Anna Machcewicz, *Kazimierz Moczarski: Biografia* (Kraków, 2009).

77 Jerzy Holzer, *Europa zimnej wojny* (Kraków, 2012), 78-9.

so as to compromise their political opponents. However, Minister Drtina, up until the communist *coup d'état* of 1948, defended the independence of the judiciary.[78]

An excellent example of the tension between the Ministry of Justice and the Ministry of Internal Affairs in Prague in the years before the communist *coup d'état* was the so-called Vladimír Krajina scandal. It also constitutes a manifestation of the manipulations of the special services officers subordinate to the communist Václav Nosek. The excuse given for these actions were activities allegedly intended to prosecute and punish German criminals and collaborators. Vladimír Krajina, one of the top members of the non-communist resistance movement during the war, became the secretary general of the Czech National Socialist Party (accidental coincidence of names with the German Nazi Party) after the war, which constituted the most dangerous political rival of the Communist Party of Czechoslovakia. StB, political police officers answerable to Minister Nosek, falsified the transcript of Karl Hermann Frank's interrogation, which contained information on the apparent cooperation of Krajina with Germany. The case was ultimately clarified and dismissed by way of a special investigation ordered by Minister Drtina.[79]

Notwithstanding this case, the Ministry of Justice, up until 1948, received information on a greater number of cases, in which courts examined persons accused on the basis of false testimonies of former Gestapo officers held by the StB. The detained Nazis, in exchange for their cooperation in incriminating political opponents of the communists, were promised release from arrest and Czechoslovakian citizenship. They were also often given better food and better conditions than other prisoners.[80]

This state of continuous tension between the communists, striving to expand their influence at any cost, and the representatives of other parties, trying to retain the attributes of a democratic rule of law, was a typical feature of the Third Republic. As was noticed by the Czech researcher Jiří Kocian, Czechoslovakia of 1945-1948 was, to a large extent, a "guided democracy".[81]

The intention to use retribution as a tool to fight political opponents fully came true in Czechoslovakia only after the communist *coup d'état* of February 1948. On 2 April of that year, an act was adopted, resuming the process of retribution. It reactivated the Extraordinary People's Courts, which, this

78 Koutek, *Prokop Drtina*, 240-80.

79 Benjamin Frommer, 'Retribution as Legitimation: The Uses of Political Justice in Postwar Czechoslovakia', *Contemporary European History*, 4 (2004), 489-90.

80 Koutek, *Prokop Drtina*, 250.

81 Jiří Kocian, 'System polityczny w Czechosłowacji w latach 1948-1989', in Jacek Bruski, Eduard Maur, Michał Pułaski, and Jaroslav Valenta (eds), *Mezi dvěma transformacemi: Československo a Polsko v letech 1947 (1948)–1989* (Prague, 2001), 43-81, 45.

time, functioned on the same terms in both halves of the country. As opposed to the first wave of retributions, the new authorities appealed to the undefined notion of "people's justice" and to the need to look at retribution through the optic of social classes.[82] It marked the beginning of the so-called "second retribution", carried out up to the end of 1948.

The proceedings before the Extraordinary People's Courts, once the Communist Party of Czechoslovakia had fully monopolized power, had little to do with the principles of a state of law. Investigations were frequently rigged by StB officers, and testimonies were extorted by means of blackmail or physical violence.[83] At the same time, the authorities in Prague introduced changes in the law, sanctioning the principles of "people's justice" at the disposal of the communists and eliminating an independent judiciary.[84] According to approximate data, roughly two thousand people were sentenced under the "second retribution".[85]

Despite all of the above listed differences, the epilogue of the retribution scheme against Nazi criminals and their collaborators was very similar in Poland and Czechoslovakia. As from autumn 1948, there was a significant drop in the number of retributive proceedings in both countries. In 1948-1949, the authorities in Warsaw almost completely suspended the operations of the Main Commission for the Examination of German Crimes, and at the same time changed its name to the Main Commission for the Examination of Hitlerite Crimes in Poland.[86] In the immediate post-war decade, characterized by Stalinist models in internal policies and by the escalating East-West conflict, the issue of examination and prosecution of wartime crimes was relegated to the status of a peripheral interest of the authorities in Warsaw and Prague.

* * *

Comparisons of the post-war retribution schemes against World War II criminals and collaborators in Poland and Czechoslovakia lead to several conclusions. Despite their completely different ethnic structures, political traditions and wartime experiences, both countries adopted similar retributive justice models. Both established special judiciaries based on simpli-

82 Borák, *Spravedlnost podle dekretu*, 76-7.

83 Kateřina Kočova, 'Trestní spisy mimořadného lidového soudu v Liberci jako pramen k dějinám druhé světove valky', in Olga Fejtová, Václav Ledvinka, and Jiří Pešek (eds), *Evropská velkoměsta za druhé světové války, každodennost okupovaného velkoměsta*: *Praha 1939-1945 v evropském srovnání* (Prague, 2007), 547-81, 548-9.

84 Kocian, *System polityczny w Czechosłowacji w latach 1948-1989*, 55.

85 Borák, *Spravedlnost podle dekretu*, 79-80.

86 Czesław Pilichowski, *Badanie i ściganie zbrodni hitlerowskich 1944-1974* (Warsaw, 1975), 32-3.

fied procedures, without the possibility of appeal and with panels of judges and jurors, the latter not being professional jurists but "representatives of the people". Warsaw, Prague and Bratislava had special tribunals tasked with trying their major Nazi criminals and collaborators. Finally, all three retributive schemes – Polish, Czech and Slovak – were gradually employed in the struggle against the independence-minded democratic opponents of the Soviet-sponsored communists. While there were certain differences in approach stemming from different traditions and wartime experiences, there were also undeniable similarities determined by the transition from Nazi to Soviet dictatorship.

Marek Kornat

Lex Retro Agit: Polish Legislation on Nazi German War Criminals in the Concepts of the Polish Government-in-Exile in London (1942-1943)

News of Nazi crimes committed in occupied Poland during the Second World War came as a great shock to Polish public opinion in the free world – that is, in exile. The issue was to become a great challenge to the entire civilized international community, but the special legislation in the form of the President of the Republic of Poland's Decree of 30 March 1943 on punishing war crimes remains a little known historical episode, especially outside Poland. That could be regarded as odd because it was a precedential regulation and an interesting example of the confluence of politics and jurisprudence on the prosecution of unimaginable German crimes that were being committed at the time.[1]

The term "war crime" gained some currency further to the internationally recognized regulations on land warfare adopted at The Hague Conference in 1907. Terms addressing existing criminal legislation remained in force, but in face of new kinds of war crimes, they were found to be wanting. "According to the prevailing opinion of Polish jurists, the Polish Penal Code was unequal to the task of punishing German crimes both in terms of definitions of the crimes themselves and the sanctions that they should trigger. According to Wacław Komarnicki, the Minister of Justice of the Polish Government-in-Exile and, up to the war, a professor of law at the Stefan Batory University in Wilno (Vilnius), the Polish legislator proved infinitely less cre-

1 More than fifty years ago, Leszek Kubicki devoted an important monograph to this issue: *Zbrodnie wojenne w świetle prawa polskiego* (Warsaw, 1963). Franciszek Ryszka, in *Norymberga, prehistoria i ciąg dalszy* (Warsaw, 1984), provided important reflections on the genesis of the "Nuremberg law", and discussed and reconstructed Polish concepts of special legislation on the prosecution of war criminals.

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ative than the German perpetrator.[2] "New crimes require new terms", was to be written in 1944 by Rafał Lemkin when stating the basic intention of the legislators of all nations that suffered during the Second World War.[3] We can add that new crimes required also new legal norms.

The most important impulse for the new special legislation was, of course, awareness of the escalation of the criminal policies of the German authorities in occupied Poland. "Germany's conduct in the occupied territories not only contravenes international law, especially the provisions of The Hague Conventions, but also the most common and serious crimes described in the criminal codes of all civilized states. Both those in command individually, and those who directly carried out the orders of those in command, should be made to answer for their crimes in the future. I believe that after the war, some kind of international tribunal will be created to which the perpetrators will be conveyed and where they will be judged. With this in mind, a Commission consisting of representatives (jurists) of countries fighting against Nazism, and an American lawyer [even though the USA was still neutral at the time – ed.] should be formed immediately, to work on proposals for such a tribunal together with its procedures, and its methods in ensuring the gathering and preparing detailed evidence to be used in future trials. For that purpose, the Commission should communicate by radio with people in the occupied territories telling them to gather and secure evidence for the above purpose. Implementation of this proposal could contribute to reducing the level of aggression, at least to some extent, of the occupation authorities … In the event of its approval, I believe that our Government should turn to the governments of the coalition fighting against Germany with a request to nominate, if they accept this proposal, their representatives (jurists) who will become members of such a Commission. The next step would be to convene

2 The Polish Institute and Sikorski Museum (London), Embassy in London, vol. A.53/1 and Stanisław Stroński's Papers, 183/30 [abbreviation: IPMS].

3 The first juridical conceptions of the new types of crimes were put forward by Lemkin in his memorandum presented in Madrid in Autumn 1933: *Les actes constituant un danger général (interétatique) considérés comme délits de droit des gens: Rapport spécial présenté à la Vème Conférence pour l'Unification du Droit Pénal à Madrid (14-20 X 1933)*, Paris 1933 (German version: *Akte der Barbarei und der Vandalismus als delicta iuris gentium*, Internationales Anwaltsblatt, Nr. 11 [November] 1933. The historiography on Lemkin is enormous. For his early biography see: Marek Kornat, 'Barbarity – Vandalism – Terrorism – Genocide: On Raphael Lemkin and the Idea of Defining "the Crimes under the Law of Nations"*, The Polish Quarterly of International Affairs*, 17/2 (2008), 79-98; idem, 'Rafał Lemkin's Formative Years and the Beginning of International Career in the Inter-war Poland (1918-1939)', in Agnieszka Bieńczyk-Missala and Sławomir Dębski (eds), *Rafał Lemkin: A Hero of Humankind* (Warsaw 2010), 59-73. See also: William A. Schabas, 'Raphael Lemkin, Genocide and Crimes against Humanity', in Bieńczyk-Missala and Dębski (eds), *Rafał Lemkin*, 233-56.

an organizational meeting of the Commission – to determine the further course of action to be taken (including the possibility of cooperation with English and American jurists)" – wrote Prof. Stanisław Stroński, the Polish Minister of Information in the Government-in-Exile.[4] His reflections were to remain an important programme declaration.

Discussion of the Polish government's efforts to establish international commitments of the Allies to prosecuting German war criminals is beyond the scope of this article.[5] We should remember, however, that on November 30, 1939, the Polish President-in-Exile, Władysław Raczkiewicz, issued a decree addressing the issue of the criminal conduct of the German and Soviet authorities on the territories they occupied in Poland. In spring 1941, Polish diplomacy made best efforts to secure from the Allied governments a declaration on punishing Nazi criminals. A Polish note to the governments of Allied states and governments-in-exile, and, indeed, to neutral states, was published on 3 May 1941.

These Polish diplomatic efforts bore fruit in the shape of a well-known international conference of representatives of nine countries in London in January 1942, at which the famous St. James's Palace declaration was issued. Assuming that such an agreement between the Allied countries had to be inherently very general, and its binding power relatively limited, the Polish government aimed at promulgating "acts or decrees issued by all of the Allied states, announcing punishment for the crimes committed by the German occupiers in breach of international law."[6]

To the limits of its abilities, the Polish Government-in-Exile in London made every effort to acquaint western public opinion with knowledge of the Nazi genocidal policy in Poland. A number of brochures on this topic were published in English: *The German New Order in Poland, The German Mass Extermination, The German Attempt to Destroy the Polish Nation, The Persecution of Jews in German-Occupied Poland. The Polish White Book,* issued by the exiled Ministry of Foreign Affairs in 1942 in English, subtitled *German Occupation in Poland*,[7] was regarded as an especially important opinion-forming publication.

In face of information trickling in from the occupied country on the war crimes that were being committed, the exiled government decided to set up a

4 IPMS, Collection 183/30.

5 Ryszka, *Norymberga*, 93-140. One of the last articles on this topic was written by Dariusz Stola, 'Dyplomacja polska wobec zagłady Żydów', in Waldemar Michowicz, *Historia dyplomacji polskiej*, V: *1939-1945* (Warsaw, 1999).

6 IPMS, Collection 183/30.

7 *Polish White Book: German Occupation in Poland: Extracts of Note Addressed to the Allied and Neutral Powers* (New York, 1942).

War Crimes Office. It was to be managed by Manfred Lachs, a future judge of the International Court of Justice at The Hague.[8]

The authors of the Polish special legislation referred to the precedential Commission examining German crimes on occupied Belgian territory (the Committee on Alleged German Outrages) set up in 1915 in Britain under the chairmanship of the then British Prime Minister, Herbert Henry Asquith. In its report, the Committee stated that "murder, lust, and pillage prevailed over parts of Belgium on a scale unparalleled in any war between civilized Nations during the last three centuries."[9]

On 24 February 1942, the Polish Government-in-Exile adopted a resolution on its intention to put Nazi war criminals on trial. On 23 June 1942, a request on the need to pass special legislation was submitted to the Council of Ministers (further referred to as the cabinet of the Polish Government-in-Exile) and signed by Komarnicki.[10]

The proposed legislation was based on two assumptions:

Firstly, Komarnicki, believed that war criminals would be tried not by international tribunals, but by state courts operating on the basis of military court regulations; it was argued that this was "increasingly widely accepted" by public opinion. The principle of military courts having special jurisdiction over war crimes was introduced by Articles 228 and 229 of the Treaty of Versailles.[11]

Secondly, in the eyes of the law, "Criminal acts of the German occupiers are crimes both under the national laws of the occupied states, and international law, codified in The Hague Conventions, but both the former and the latter regulations are insufficient." New crimes required new definitions and bespoke legislation.

The first draft of a special criminal act for war criminals was produced by the Legislative Commission of the Polish Government-in-Exile. Its content was substantiated as follows: "Since the assault on Poland of 1 September 1939, the Germans have committed in the areas they have occupied numerous acts of cruelty with such sophistication and on a scale that defies comparison to anything seen in modern war. It constitutes the conscious appli-

8 IPMS, Collection 183/30.

9 Ibid.

10 The Polish President-in-Exile did not apply his right of veto which he possessed under the Constitution of 1935. The legislative practice assumed the preparation of draft decrees by the cabinet for the president to sign. The process would commence with the given minister tabling a request for action in a given matter; this would be followed by a cabinet debate, and an appropriate resolution approving the final form of the given legal regulations would be adopted.

11 The implementation was not complete; jurisdiction was conferred upon German courts.

cation of total war, created by German military and legal doctrine, being the effect of long nurtured predatory instincts. No one and nothing is safe from this total war. It turns against the civilian population; its victims are women, children and elderly people. It destroys cultural assets with exceptional barbarity. It is in conflict with the binding international law of The Hague Conventions, with the common customary laws of modern states, and with the corresponding legal meaning of the term civilized nations. It is contrary to Christian culture and, by destroying moral values, leads to total nihilism. In relation to Poland, total war is the destruction of the Polish Nation, both by removing the material grounds for its existence and by destroying its cultural heritage built up throughout the ages. The present Polish-German war is but a further stage in the sustained Germanic march to the East, the 'Drang nach Osten' under the banner of 'ausrotten', for over a thousand years. In view of this state of affairs, the Polish Government in London has a special obligation to resort to any means of intervention at its disposal that may impede this German policy of extermination. For no Allied state is the war crimes issue as important as it is for Poland, as no occupied state is in a similar situation to that of our country. Therefore, the special activity of the Polish Government related to this issue is entirely justified, which does not make the joint efforts of the Allies any the less important. Implementation of this activity should be supported by the Polish Government regardless of the steps it takes on its own. The country demands particularly intensive and energetic counteraction from its Government against German terror in Poland. This is of great moral significance for our country and it supports the population in its relentless resistance to the occupiers."[12]

The idea of a special act on war crimes institutionalizing the responsibility for the criminal acts that were being perpetrated required retroactive effect. It was designed to enable prosecution of criminal acts thus redefined that were committed on Polish soil after 31 August 1939. "The decisive factor for the Polish Government regarding the retroactive effect of the promulgated decrees is the German disregard for any legal and moral principles in relation to the Polish State which provides a legal basis for the application of extraordinary retaliatory measures."[13] That was the basic *ratio legis*.

This was to be an act of "the Will of the Polish Republic" on holding responsible war criminals upon termination of hostilities. It took the form of the highest legislative act available which gave "the most solemn, firm and binding expression" to this will.

12 IPMS, Collection 183/30.
13 Ibid.

The concept of special criminal law for crimes committed in occupied Polish territories was expressly set out at cabinet meetings in London on 2 and 15 July 1942. The main author of the decree on criminal responsibility for war crimes was Komarnicki, though it might be added that Ministers Stanisław Stroński and Marian Seyda exerted significant impact on the final form of this decree's executive regulations.

On 15 July 1942, the cabinet appointed a special ministerial committee to draft this decree. It consisted of the following ministers: Wacław Komarnicki (Minister of Justice), Stanisław Mikołajczyk (Deputy Prime Minister), Stanisław Stroński (Minister of Information), Marian Seyda (Minister of Congress Works) and Edward Raczyński (Acting Minister of Foreign Affairs).

The statements of President Roosevelt on 21 August 1942 and Winston Churchill on 8 September 1942, on pressing charges against war criminals after the war and recognizing this to be one of the major war aims, were actually preceded on 20 August by the appointment of an Inter-Allied Commission for Punishing War Crimes), which was chaired by the British diplomat William Malkin. Representatives of the exiled Dutch and Czechoslovak governments "requested issuing special enactments demonstrating that regulations of their criminal laws are insufficient." The Polish representative at this meeting did not support this motion.

The British Lord Chancellor, John Simon, made a statement in the House of Lords on 7 October 1942 on the problem of appointing an international research commission investigating the crimes of Nazis and their allies and the consequent examination of competencies of international and national tribunals. In autumn 1942, Frederic Herbert Maugham, Lord Chancellor in the previous cabinet of Neville Chamberlain, presented the idea of appointing two international criminal tribunals: one for Western Europe and one for Eastern Europe. Komarnicki took issue with this concept, arguing that "Lord Maugham's idea is most distasteful to us; in the event of its acceptance, we would have to create a common tribunal with the Bolsheviks."[14]

The main reason for the Polish concept of special legislation against war criminals was, as expressed by Komarnicki at a Polish cabinet meeting in London: "Poland has a special moral right to be in the vanguard of states demanding punishment for German criminals, because Poland paid and is still paying a particularly bloody price in terms of the lives and property of its citizens. Recent reports from the country are desperate and alarming in tone and impose on Government the obligation to act with the utmost vigour to achieve its goal."[15]

14 Ibid.
15 Ibid.

During the cabinet meeting of 17 October 1942, Komarnicki delivered a report on the proposed draft presidential decree on criminal responsibility for war crimes committed in occupied Poland. He tabled it as a motion for resolution at a cabinet meeting on 15 July 1942.[16] The final text of the "decree on criminal responsibility for war crimes" was voted through by the cabinet on 17 October 1942.[17]

This decree consisted of eleven articles which may be summarized as follows:

Article 1 defined the category of persons subject to criminal responsibility and stipulated: "Citizens of the German Reich or its allied countries or countries cooperating with or serving the German Reich or these countries in wartime, are subject to criminal responsibility, under this decree, for crimes committed after 31 August 1939 regardless of their place of commitment." The article was formulated in such a way that it provided the possibility of holding responsible collaborating Ukrainian or Lithuanian units allied with the Germans and collaborating Polish citizens.

Article 2 defined the crimes covered by the decree: "Whoever, in breach of the standards of international law, commits an act to the detriment of the Polish State, a Polish legal person or a Polish citizen, shall be subject to imprisonment."

Article 3 specified the criminal liability for the given crimes, stipulating that: "If an act listed in Article 2 caused death, exceptional torment, physical disability, permanent physical or mental illness, permanent inability to work, imprisonment for at least 14 days, the eviction or resettlement of a Polish citizen, the perpetrator shall be subject to the penalty of life imprisonment or the death penalty."

Article 4 specified an additional penal sanction for perpetrators of particularly serious crimes: "If an act listed in Article 2 caused common danger to human life or health in Poland, the perpetrator shall be subject to the death penalty or life imprisonment."

Article 5 contained a short provision on penal sanctions for the use of forced labour and forced conscription of Polish citizens into the army of an invader-occupier state: "A person who forces a Polish citizen to join a foreign army or – in breach of international law – to work for the enemy, shall be subject to the penalty of life imprisonment or the death penalty."

Article 6 listed the penal sanctions to be imposed on the judiciary of the German occupation authorities: "(1) A person that adjudicates on behalf of occupation authorities on the basis of legal provisions issued in breach of the

16 For documentation of these activities see Marian Zgórniak (preface), Wojciech Rojek (ed), *Protokoły posiedzeń Rady Ministrów Rzeczypospolitej Polskiej 1939-1945*, vol. 4: *Grudzień 1941 – sierpień 1942* (Kraków, 1998), 364-73.

17 Ibid., t. V: *Wrzesień 1942 – lipiec 1943* (Kraków, 2001), 38-51.

standards of international law, and thereby causes harm to a Polish citizen, shall be subject to imprisonment. (2) If this kind of ruling results in one of the situations listed in Article 2 or Article 3, the perpetrator shall be subject to the death penalty or life imprisonment."

Article 7 dealt with the criminal responsibility of the executors of the German occupier's policy regarding the intentional destruction of Poland's cultural heritage. It introduced the term "public or private property of importance to the nation" and stipulated: "Whoever, in breach of the standards of international law, robs, steals, destroys or to a significant extent damages public or private property, if the property is of national importance, shall be subject to the penalty of life imprisonment or the death penalty." In order to counteract the policy of looting in the occupied territories and the destruction of Polish cultural heritage, the term "property of importance to the nation" was introduced covering both cultural property and commercial and economic assets.

Article 8 laid down that: "In the event of sentence being passed for an act described in the decree, the court may adjudicate an additional penalty of forfeiture of property and of the right of inheritance."

Article 9 specified that "The penalties under Articles 2-8 of the decree shall be applied both to the person issuing an order to perform an act stipulated hereby and to the person performing that act."

Article 10 was particularly important, as it stipulated that "the time bar periods provided in Article 86 of the Criminal Code, are to be suspended for the duration of any adjournment or abeyance, and recommenced upon the activities of the Supreme Military Court being resumed".

Article 11, which closed the decree, stipulated that "cases related to crimes covered by this decree are under the jurisdiction of the competent military courts, issuing rulings in the military proceedings mode." This meant that criminal jurisdiction against German war criminals was to be of a military character.

The Decree came into effect as of the date of its announcement. It was signed on 30 March 1943 by President Raczkiewicz on the strength of powers vested in him by the Constitution of 23 April 1935, which authorized the Head of State to rule by decree when the Legislative Chambers (Parliament) proved inoperative.

It is easy to see that the repeatedly used fundamental term "international law" was to be understood as referring to the standards codified in The Hague Conventions of 1907, which addressed responsibilities related to the occupation of territories conquered in war.[18]

18 The efforts of the international movement for codification of international criminal law were focused on this idea. The very term "international criminal law" started to

The Decree of the Polish President of 30 March 1943 does not specify the nationality of victims of the criminal policy of German Nazis in the occupied territories of Poland. It assumes only one category of victim – Polish citizens.

The penalties specified in these decree were unquestionably severe. The most serious crimes were to be punished by long-term prison sentences or execution, leaving the decision to the military courts that were to be appointed. The criminal sanctions defined in the decree clearly referred to the Polish Criminal Code of 11 July 1932, where life imprisonment or execution was the punishment for those convicted of premeditated murder without mitigating circumstances.[19] However, these criminal sanctions were primarily assumed to be consistent with the common criminal legislation practice during the war in most civilized countries.

In a presidential decree on responsibility for war crimes, the term *crime against humanity* was not used. Nor was the term *genocide* used; that term was introduced into jurisprudence by the Polish-Jewish lawyer Rafał Lemkin in 1944, when he published his thesis *Axis Rule in Occupied Europe,*[20] which proved to be of fundamental importance to the course of thinking on German war crimes.

The concept of retributive justice for German war criminals required overcoming the central principles of legal positivism, which was the dominant system of jurisprudence in Europe at the time. It also required the temporary suspension of the norms of Roman law such as, for example, the *lex retro non agit* principle. Polish émigré efforts in regard of this contingent jurisprudential adjustment were concentrated in their entirety on substantiating this extraordinary need.

The main author of the Polish decree, Komarnicki, spoke on 17 October 1942 most of all against the no-retroactivity rule: "A lot of legislative arguments were used against responsibility for war crimes, in particular against special enactments. The retroactive nature of the proposed Act was criticized in particular. This polemic, however, was based on a misunderstanding. The special act was not retroactive in a material sense, as the criminal acts of the Germans and their allies were always considered crimes by civilized nations,

gain currency, which constituted a significant achievement. These efforts were reconstructed by a Polish lawyer: Emil Stanisław Rappaport, *Konferencja Międzynarodowa Unifikacji Prawa Karnego a jej poprzedniczki (Garść wspomnień, wrażeń i myśli 1927-1933)* (Łódź,1934).

19 Rafał Lemkin (ed), *Kodeks Karny r. 1932 wraz z prawem o wykroczeniach i przepisami wprowadzającymi Kodeks Karny i prawo o wykroczeniach* (Warsaw, 1932).

20 I have described Lemkin's views on criminal law in various publications. See Marek Kornat, 'Rafał Lemkin i pojęcie ludobójstwa', in Alicja Bartuś and Piotr Trojański (eds), *Auschwitz a zbrodnie ludobójstwa XX wieku*, (Oświęcim, 2012), 13-27; Idem, 'Barbarity – Vandalism – Terrorism – Genocide, 89-93.

which gave rise to adequate provisions of both international and national law. A special element was the intensification of criminal acts, so far of an unprecedented scale of innovativeness in this field, going beyond previous definitions, and, first of all, requiring that criminal sanctions be made much more severe."[21]

The arguments of the authors of the Polish act on punishing war criminals stipulated directly that the legislator must apply the principle of rightful "retribution" against war criminals. "Retribution is an ethical principle and, as such, has played a considerable part in the development of the criminal law" – wrote Professor Stefan Glaser.[22]

The application of the principle of "retroactivity" of this special act itself is based on the right to retortion. But it was always held that the most important motive of this special legislation was a desire to "fulfil the nostrum of historic justice; that is, to establish the moral principles of international relations. This was at the same time a protest against German crimes which resulted from a system destroying international relations and trying to push humanity back in its development." This kind of argument was an attempt to prove that the activities of Polish legislators were based not only on Polish issues, but also on a generally shared position, and was aimed at fixing international relations by modernizing and improving international law.

Komarnicki, being the main author of the Polish concept of special criminal law for a transitory period, argued for basing the Polish decree strictly on the norms of international law. As a Minister of Justice, he supported the use of regulations of The Hague Conventions.

Inspired by the Roman principle of *lex retro non agit* and corresponding to the requirements of civilized legislative standards, penal law constituted the main motive for criticism of the idea of special criminal legislation for a transitional period after the war. In Great Britain this criticism was strong, although the progressive flow of information about the wonton cruelty of the Nazis in Europe weakened it significantly. "Of course, there are still many doctrinaires among international law theoreticians demanding the maintenance of far-reaching guarantees of an impartial judiciary in this field, namely proceedings before international tribunals. Due to participating in numerous international congresses before the present war I am well acquainted with the mentality of this community. However, also in this community, understanding for intensifying reprisals for international crimes continues" – said Komarnicki at the cabinet meeting of 2 July 1942.[23]

21 Ibid.
22 Ibid. The full text of Glaser's considerations is in the annex to this article.
23 IPMS, Collection 183/30.

The "retroactivity" of the decree should be considered justified as needed because "in relation to the Germans, it will constitute the consequence of applying retroactively, criminal legislation in the countries occupied by them. In particular, this applies to Poland, whereas the German decree of 1 October 1939 introducing the German Criminal Code and courts martial (*Standgerichte*) was issued to judge alleged crimes committed before 1 September 1939. Under this decree, the Germans have convicted and are still convicting thousands of Polish citizens for the alleged abuse of Germans upon the very outbreak of the war. Under the terms of this decree, the Germans dispensed justice as they saw it throughout the entire territory of pre-war Poland. Defendants (brought to book under this retroactive law) included insurgents (in the post-World War I anti-German uprisings) of Greater Poland (Wielkopolska) and Upper Silesia."[24]

Komarnicki also referred to the speech of Lord Maugham at an International London Assembly on 28 September 1942, who stated that "retroactivity of legislation is by no means a stranger to English law." He referred to numerous cases from the history of English law when retroactive legal acts described by English lawyers as *lex pro re nata* were issued.[25]

It should be emphasized that the Minister of Information, Prof. Stanisław Stroński, introduced an important amendment to Article 1, which originally was narrower in scope. At his request, it covered "persons serving the German Reich or its allied states or states cooperating (with them) in time of war". Stroński's intention was to help the restored Polish State to "apply the decree to Latvian and Lithuanian policemen, and the so-called navy blue policemen who took part in German executions carried out in Poland."[26]

At a cabinet meeting, Komarnicki claimed that the international situation had essentially changed "in favour of the Polish theses on the responsibility for war crimes". He stated that the favourable attitude of the international community to the Polish idea of special criminal legislation for war criminals was to a significant extent "the result of the operations" of the diplomacy of the Polish government in exile. First of all, Komarnicki spoke of the great impression made by information on the Nazi Reich's criminal occupation policy. "Growing understanding of this problem is resulting to a large extent in increasing German terror … It is clear that we are entering a new particularly grim and cruel phase of the war in which the Germans, who sense that the tide is turning against them, will resort to ever increasing cruelty, and cross every boundary, which may harm the Allied nations."[27]

24 Ibid.
25 Ibid.
26 Ibid.
27 Ibid.

Komarnicki argued that special national legislation would be necessary in order to impose adequate penalties on the perpetrators of crimes in occupied states. "The issue of the scope of those to be punished involves the issue of jurisdiction," he said. "If only the leaders are to be tried, then the international tribunals will satisfy the need. But if those executing orders – and there are many of them – are to be tried as well, it will be necessary to involve national courts."[28]

The effects of special legislation were not clear. In summer 1942, in view of the perception that "Germans are elated with the victories in Russia and Libya", this gave rise to the argument that condemnation and the threat of penalties would not stop the criminals. There were also concerns as to whether "issuing the decree would not result in reprisals back home". However, in the opinion of Minister Komarnicki, the idea of a special act could bring some positive results during the war, by affecting the Nazi leaders psychologically. He said: "It would be erroneous to believe that this activity has effect only on paper. On the contrary, it may have an inhibiting effect, especially considering the psychology of Germans who are raised in fear of *Gesetz* and *Verordnung*. The provisions of this act may have much stronger effect than the strongest words used in statements and speeches."[29] Today, we can state that Komarnicki was not right, as the various statements of Allied governments on the intention to punish war criminals did not have a mitigating effect on the Nazi authorities in the occupied territories. It must be emphasized that the Polish Minister of Justice argued with the British general public, which maintained that "threatening with sanctions will have an adverse psychological effect on the Germans in that it would reinforcing their resistance."[30]

While addressing the cabinet on 17 October 1942, Komarnicki declared the need to inform the Allies on the decree of the Polish President and made the timing of its publication subject to agreement with them. The Minister was convinced that "the best possible moment for issuing the decree has come" but "its effect will be greater if we agree our moves with at least some of our Allies."[31] This was why the President signed the document nearly six months later.

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28 Ibid.
29 Ibid.
30 Ibid.
31 Ibid.

(1) The idea of Polish special legislation against war criminals was based on the belief that it was necessary to declare the adoption of penal sanctions against perpetrators of crimes in the occupied Poland before the end of the war.

(2) War crimes committed by the Soviets in the Polish territories they occupied in 1939-1941 were not forgotten, but any thoughts of retributive justice in their respect had to be sacrificed on the altar of a greater need once the USSR took up the main strain of war against the Third Reich.[32] In Polish diplomatic parlance in exile, the Soviet Union became "the allies of our allies".

(3) The Hague Conventions of 1907 constituted fundamental support for the authors of the Polish special legislation against war criminals. As frequently underlined, it expressed "the conscience of humanity" of those times. In the unyielding opinion of the Polish legislators, they provided the basis for defining acts forbidden by law in foreign territories occupied by civilised countries. However, they were not sufficient and new international and national regulations were needed.

(4) The principle definitions of new criminal acts were introduced with the awareness that they breached the *lex retro non agit* principle and, by way of special legislation, they provided the possibility of holding war criminals responsible. It was justified by reference to the principles of Roman law and the obligations imposed by The Hague Conventions that were breached by the authorities of the Third Reich.

(5) Wacław Komarnicki, the author of the Polish doctrine of prosecution of Nazi crimes, subscribed to the view that punishment of the authorities of the Third Reich alone was not enough; it was also necessary to penalise the executioners of the orders, edicts and criminal practices ordained by those authorities.

(6) Polish legislators working on the presidential decree of 30 March 1943 on investigating war crimes believed that once the war ended, it would be necessary to establish special international judiciaries to punish war criminals. However, they argued with equal vigour that special national legislation and national jurisdiction would also be necessary.

(7) Komarnicki believed that the planned anti-German retributive justice legislation constituted "the best possible attempt at the first national codification of international criminal law in this respect" of all the nations that fell victim to German aggression and subjugation.

32 Prof. Komarnicki was a prisoner in the USSR in the period 1940-1941 and released under the terms of the Polish-Soviet agreement (a.k.a. the Sikorski-Majski Agreement) of 30 July 1941. By decision of Prime Minister Sikorski he was brought to London to take office as Minister of Justice.

(8) Finally, it should be stressed that no time bar was envisaged for the prosecution of Nazi crimes.[33] Special executive ordinances and regulations were to be developed later, after 30 March 1943, the date this presidential decree was to pass into law.

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Annexes[34]

Decree of the President of the Republic of Poland of the 30 March 1943 on liability for war crimes

Article 1.
This Decree appertains to penal liability for offences set out hereunder after the day of 31 August 1939 committed in conjunction with the German Reich, its Allies and to all other Countries co-operating with them, as well as to persons in the employ of any such Countries, without regard to where such offences may have been perpetrated.

Article 2.
Persons who in defiance of the principles of international law commit any offence against the Polish State, Polish legal authorities or Polish citizens are liable to punishment by imprisonment.

Article 3.
If any offence under Article 2 results in the death, torture, physical disability, permanent physical or mental illness, incapability for work, imprisonment of fourteen days or more, compulsory eviction or expropriation of a Polish citizen, the offender is liable to punishment by life imprisonment or death sentence.

Article 4.
If any offence under Article 2 causes general danger to human life or public health in Poland, the offender is liable to punishment by life imprisonment or death sentence.

Article 5.
A person who compels a Polish citizen to join foreign armed forces or, in defiance of the principles of international law, to work for the enemy, is liable to punishment by life imprisonment or death sentence.

33 This concept was discussed in Karol Jonca, 'Polska doktryna nieprzedawnienia zbrodni hitlerowskich', *Biuletyn Głównej Komisji Badania Zbrodni Hitlerowskich w Polsce,* 33 (1991), 33-45.

34 Both documents are kept in the Prof. Stroński's papers (IPMS, Collection 183/30).

Article 6.
(1) The punishment for a person passing judgment on behalf of the occupying authorities according to laws contravening the principles of international law wrongs a Polish citizen is imprisonment.
(2) If a judgment results in an offence under Articles 2 and 3, the offender is liable to punishment by life imprisonment or death sentence.

Article 7.
A person who in defiance of the principles of international law pillages, steals, destroys or substantially damages either public or private property of general national value, is liable to punishment by life imprisonment or death sentence.

Article 8.
Courts sentencing for any offences under this Decree may also impose the additional penalty of forfeiture of property and/or inheritance rights.

Article 9.
Penalties for offences under Articles 2 to 8 are to be imposed on persons who order offences to be perpetrated as well as on persons who carry out such orders.

Article 10.
Statutes of limitation as provided for under Article 86 of the Penal Code are to run from the day of resumption of a suspended Military High Court hearing.

Article 11.
Offences set out in this Decree are to be tried by courts-martial in accordance with the rules of wartime procedure.

Article 12.
This Decree shall be implemented by the Ministers of Home Affairs, Justice and Military Affairs.

Article 13.
This Decree will pass into law on the day of its publication.

President of the Republic of Poland
Prime Minister
Minister of Home Affairs
Minister of Justice
Minister of Military Affairs

IPMS, Embassy of the Republic of Poland in London, vol. A.53/1.

2.
Note on the Application of Criminal Procedure to Illegal Acts Committed in Territories under German Occupation

An unprecedented feature of the present war is the extent to which international law is being violated. Acts are constantly being committed in contravention of the fundamental principles, rules and customs of the Law of Nations. These breaches are particularly marked in the occupied countries where, either at the command of the German authorities, or on their own initiative, officials are carrying out illegal acts which are not only hostile to the vital interests of the occupied nation in question but also harmful to human society in general.

It is unnecessary to specify these acts in detail. They include mass executions, the wholesale plundering of private property, the widespread adoption of methods of torture and similar proceedings.

It is submitted that acts of this kind, committed on so wide a scale and with such clear intent, ought not go unpunished.

The case for subjecting those held responsible for such acts to criminal law procedures rests on two grounds.

One is that the idea of justice demands it. Retribution is an ethical principle and, as such, has played a considerable part in the development of criminal law. One of the purposes of punishment consists in giving satisfaction to the moral feelings of the community at large. No authority responsible for the upholding of justice in the community can fail to take into consideration the resentment felt by a society that has suffered injury from a crime. This is not only the general view of ordinary mankind but has also been recognized and upheld both by theorists, such as Professor Henry Sidgwick and by practicing jurists such as Sir Edward Fry, Lord Justice Kennedy and Lord Justice Wright.

In this connection some discussion has arisen as to who should be proceeded against in cases where a crime has been committed by a subordinate at the command of his official superior. Some years ago, the writer of this Note submitted arguments in support of the view that the responsibility should be placed upon both parties and that both should be subjected to criminal penalties.

As a guarantee of impartiality in dealing with such cases, it is suggested that they should be tried by an International Court composed of nationals of countries which have not been under enemy occupation during this war. This court would be empowered to demand the extradition of persons against whom a charge was laid.

It might be found opportune to draw up a code of the crimes involved in such cases.

If it was decided that action along the above lines was called for at the end of the war, it is suggested that practical steps might be taken immediately

(1) to announce to the world by wireless and any other means that it is proposed to set up a court of this kind after the war,

(2) to urge by similar means the populations concerned to collect and preserve the fullest possible evidence, for use in the future trials.

In addition to their utility in the future, these measures would also, to some degree, have a preventive effect during the war.

Professor Stefan Glaser, PhD

IPMS, Stanisław Stroński's Collection 183/30.

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